

# BRAE CORPORATION

RECORDATION NO. 10630-1 Filed 1425

JUL 16 1979 - 3 25 PM

INTERSTATE COMMERCE COMMISSION

July 16, 1979

Mr. H. G. Homme  
Acting Secretary  
Interstate Commerce Commission  
Washington, D. C. 20423

RECORDATION NO. 10630-1 Filed 1425

JUL 16 1979 - 3 25 PM

INTERSTATE COMMERCE COMMISSION

Dear Sir:

Enclosed for filing pursuant to 49 U.S.C. §11303 are several copies of each of the following documents, which relate to the railroad equipment described on and marked in accordance with Schedule A to this letter.

- (1) Equipment Trust Agreement dated as of June 1, 1979 between Brae Corporation and Morgan Guaranty Trust Company of New York, as Trustee;
- (2) Assignment of Lease and Agreement dated as of June 13, 1979 between Brae Corporation, as assignor, and Morgan Guaranty Trust Company of New York, as Trustee, as assignee; and
- (3) Lease Agreement dated as of November 2, 1978 between Brae Corporation, as lessor, and Berlin Mills Railway, Inc., as lessee.

The names and addresses of the parties to the documents described above are as follows:

(a) Equipment Trust Agreement:

(1) Lessee - Guarantor:

Brae Corporation  
Three Embarcadero Center  
San Francisco, California 94111

(2) Trustee:

Morgan Guaranty Trust Company of New York  
30 West Broadway  
New York, New York 10015

(b) Lease Agreement:

(1) Assignee:

Morgan Guaranty Trust Company of New York  
30 West Broadway  
New York, N. Y. 10015

(2) Lessor:

Brae Corporation  
Three Embarcadero Center  
San Francisco, California 94111

(3) Lessee:


Berlin Mills Railway, Inc.  
650 Main Street  
Berlin, New Hampshire 03570

The Lease Agreement relates to railroad equipment in addition to the equipment listed on Schedule A, but it is being assigned to the Trustee only to the extent that it relates to the equipment specifically listed on Schedule A.

Please file the enclosed documents and cross index them under the names of the Morgan Guaranty Trust Company of New York, Brae Corporation and Berlin Mills Railway, Inc. A check payable to the order of the Interstate Commerce Commission in the amount of \$100 has been enclosed in order to cover the filing fee.

Please return to the person presenting this letter your fee receipt, the enclosed copy of this letter and any copies of the documents not required for recordation, all stamped to indicate appropriate filing information.

Very truly yours,

  
Michael T. Everett  
Assistant Secretary

SCHEDULE A

<u>No. of Boxcars</u>	<u>Equipment Identification Numbers (Both Inclusive)</u>	<u>Description</u>	<u>AAR Mechanical Designation</u>
50	UO 1500- UO 1549	50'6" 70-ton	XM
300	BMS 00201- BMS 00500	50'6" 70-ton	XM

Interstate Commerce Commission  
Washington, D.C. 20423

7/16/79

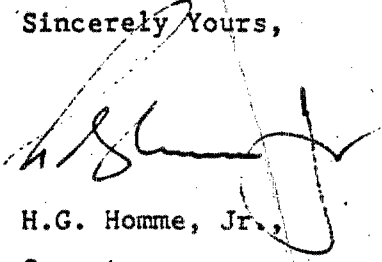
OFFICE OF THE SECRETARY

Michael T. Everett  
Assistant Secretary  
Brae Corporation  
Three Embarcadero Center  
San Francisco, Calif. 94111

Dear Sir:

The enclosed document(s) was recorded pursuant to the  
provisions of Section 20(c) of the Interstate Commerce Act,  
49 U.S.C. 20(c), on 7/16/79 at 3:25 PM  
and assigned recordation number(s) 10630, 10630-A, 10630-B

Sincerely Yours,

  
H.G. Homme, Jr.,  
Secretary

Enclosure(s)

SE-30-T  
(2/78)



RECORDATION NO. 80590 Filed 1425

JUL 16 1979 - 3 25 PM

INTERSTATE COMMERCE COMMISSION

[CS&M Ref. 1274-090]

BRAE CORPORATION  
EQUIPMENT TRUST  
First 1979 Series

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EQUIPMENT TRUST AGREEMENT

between

MORGAN GUARANTY TRUST COMPANY OF NEW YORK,

Trustee,

and

BRAE CORPORATION

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Dated as of June 1, 1979

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EQUIPMENT TRUST AGREEMENT dated as of June 1, 1979, between MORGAN GUARANTY TRUST COMPANY OF NEW YORK, a corporation organized under the laws of the State of New York (the "Trustee"), and BRAE CORPORATION, a Delaware corporation (the "Company").

WHEREAS the Company has agreed to cause to be sold, transferred and delivered to the Trustee the railroad equipment described in Schedule A hereto;

WHEREAS title to such railroad equipment is to be vested in and is to be retained by the Trustee and such railroad equipment is to be leased to the Company hereunder;

WHEREAS BRAE Corporation 11% Equipment Trust Certificates, First 1979 Series (hereinafter, together with the guarantee of the Company endorsed thereon, called the "Trust Certificates", such term to include the singular as well as the plural number), are to be issued and sold from time to time in an aggregate principal amount not exceeding \$20,000,000, and the proceeds of such sale are to be deposited in trust with the Trustee and are to constitute a fund to be known as BRAE Corporation Equipment Trust, First 1979 Series, to be applied by the Trustee as provided herein;

WHEREAS the Company has agreed to give and assign to the Trustee, as security for the obligations of the Company hereunder, a security interest in all the Company's right, title and interest in and to the leases described in Schedule A hereto and any and all leases hereinafter entered into with respect to the Trust Equipment (as hereinafter defined), to the extent that such right, title and interest relate to Trust Equipment, including all rents, moneys and proceeds due or to become due with respect to the Trust Equipment under such leases;

WHEREAS the Company has also agreed to give and assign to the Trustee, as security for the obligations of the Company hereunder, a security interest in all the Company's right, title and interest in and to the maintenance contract described in Schedule B hereto to the extent that such right, title and interest relate to the Trust Equipment;

WHEREAS the Company is entering into this Agreement and endorsing its guarantee on the Trust Certificates as an inducement to the purchase of the Trust Certificates by the purchasers thereof; and

WHEREAS the text of the Trust Certificates and the guarantee to be endorsed on the Trust Certificates by the Company, are to be substantially in the following forms, respectively:

[Form of Trust Certificate]

\$ \_\_\_\_\_

No. \_\_\_\_\_

BRAE CORPORATION

11% Equipment Trust Certificate  
First 1979 Series

Total Authorized Issue: \$20,000,000

MORGAN GUARANTY TRUST COMPANY OF NEW YORK,  
Trustee,

MORGAN GUARANTY TRUST COMPANY OF NEW YORK, as Trustee (the "Trustee"), under an Equipment Trust Agreement (the "Agreement") dated as of June 1, 1979, between the Trustee and BRAE Corporation, a Delaware corporation (the "Company"), certifies that

or registered assigns is entitled to an interest of \_\_\_\_\_ Dollars in BRAE Corporation Equipment Trust, First 1979 Series, due and payable on or before December 1, 1994, in installments as hereinafter provided, and to interest on the amount of unpaid principal from time to time due and owing pursuant to this Trust Certificate, due and payable quarterly on March 1, June 1, September 1 and December 1 in each year, commencing on the first such date occurring after the date hereof (provided that any interest payable hereunder within 30 days after the original issuance hereof shall be carried over to the next date interest is payable hereunder), at the rate of 11% per annum from the date hereof until such principal amount becomes due and payable, with interest on any overdue principal and interest, to the extent legally enforceable, at the rate of 12% per annum. Interest shall be computed hereunder on the basis of a 360-day year of 12 30-day months.

Payments of principal and interest shall be made by the Trustee to the registered holder hereof at the office of the Trustee at 30 West Broadway, New York, New York 10015

(the "Corporate Trust Office") in such coin or currency of the United States of America as at the time of payment, shall be legal tender for the payment of public and private debts. Each of such payments shall be made only from and out of rentals or other moneys received by the Trustee and applicable to such payment under the provisions of the Agreement.

The original principal amount of this Trust Certificate is due and payable in 60 consecutive quarterly installments, each such installment in an amount equal to the amount obtained by subtracting the interest due hereon on such date from 3.422% of the original principal amount hereof, on March 1, June 1, September 1 and December 1 in each year, commencing March 1, 1980, and ending December 1, 1994, both inclusive, except to the extent prepayments are applied as provided in the Agreement to the prepayment of installments (the final installment being in any event in an amount equal to the remaining principal amount owing on this Trust Certificate). This Trust Certificate is subject to prepayment in whole or in part, in certain cases with a premium, in other cases without a premium, as specified in the Agreement.

This Trust Certificate is one of an authorized issue of Trust Certificates, in an aggregate principal amount not exceeding \$20,000,000, issued or to be issued under the Agreement, under which certain railroad equipment leased to the Company (or cash or obligations defined in the Agreement as "Investments" in lieu thereof, as provided in the Agreement) is held by the Trustee in trust for the equal and ratable benefit of the holders of the outstanding Trust Certificates issued thereunder. Reference is made to the Agreement (a copy of which is on file with the Trustee at the Corporate Trust Office) for a more complete statement of the terms and provisions thereof, to all of which the registered holder hereof, by accepting this Trust Certificate, assents. The Trust Certificates are initially issuable as fully registered Trust Certificates in denominations of at least \$25,000 or any integral multiple of \$1,000 greater than \$25,000. The several denominations of Trust Certificates are interchangeable upon presentation thereof for such purpose at the Corporate Trust Office, but only in the manner, subject to the limitations, and upon payment of the charges as provided in the Agreement.

The transfer of this Trust Certificate is registrable in whole or in part by the registered holder hereof



in person or by duly authorized attorney on the books of the Trustee upon surrender to the Trustee at the Corporate Trust Office of this Trust Certificate accompanied by a written instrument of transfer, duly executed by the registered holder in person or by such attorney, in form satisfactory to the Trustee, and thereupon a new Trust Certificate or Certificates for the then unpaid aggregate principal amount hereof will be issued to the transferee in exchange herefor and, if less than the then entire unpaid principal amount hereof is transferred, a Trust Certificate for the balance thereof will be issued to the transferor. Prior to the due presentment for registration of transfer, the Trustee and the Company may deem and treat the person in whose name this Trust Certificate is registered as the absolute owner hereof for the purpose of receiving payment of principal, premium, if any, and interest and for all other purposes and shall not be affected by any notice to the contrary.

In case of the happening of an Event of Default (as defined in the Agreement) all installments of principal (and interest accrued thereon) represented by this Trust Certificate may become or be declared due and payable in the manner and with the effect provided in the Agreement.

The provisions of this Trust Certificate, and all the rights and obligations of the Trustee, the Company, and the holder hereof, shall be governed by and construed in accordance with the laws of the State of New York.

IN WITNESS WHEREOF, the Trustee has caused this Trust Certificate to be signed by one of its Trust Officers, by his signature or a facsimile thereof, and its corporate seal or a facsimile thereof to be hereunto affixed or herein imprinted and to be attested by one of its Assistant Secretaries by his signature.

Dated as of

MORGAN GUARANTY TRUST COMPANY  
OF NEW YORK, as Trustee,

by

\_\_\_\_\_  
Trust Officer

Attest:

\_\_\_\_\_  
Assistant Secretary

[Corporate Seal]

## GUARANTEE

BRAE Corporation, a Delaware corporation, for a valuable consideration, hereby unconditionally guarantees to the registered holder of the within Certificate the prompt payment when due of the principal of said Certificate, and of any premium payable thereon, and of the interest thereon specified in said Certificate, with interest on any overdue principal and interest, to the extent legally enforceable, at the rate of 12% per annum, all in accordance with the terms of said Certificate and the Equipment Trust Agreement referred to therein.

BRAE CORPORATION,

by

\_\_\_\_\_  
Vice President

## NOTATION OF PREPAYMENTS\*

By reason of payments having heretofore been applied to pay or prepay installments, the within Certificate in the principal amount of \$ \_\_\_\_\_ was, as of \_\_\_\_\_, 19\_\_\_\_, payable in \_\_\_\_\_ consecutive installments, each such installment in an amount equal to the amount obtained by subtracting the interest due hereon on such installment payment date from \$ \_\_\_\_\_, on March 1, June 1, September 1 and December 1 in each of the years 19\_\_\_\_, through 1994, commencing \_\_\_\_\_, 19\_\_\_\_, and payable by a final such installment of \$ \_\_\_\_\_ on December 1, 1994 (the final installment being in any event in an amount equal to the remaining principal amount owing on the within Certificate).

MORGAN GUARANTY TRUST COMPANY  
OF NEW YORK, as Trustee,

by

\_\_\_\_\_  
Trust Officer

\_\_\_\_\_  
\* To be included only on Certificates issued upon exchange or transfer.

FOR VALUE RECEIVED, the undersigned hereby sells, assigns and transfers unto [please insert Social Security or other identifying number of Assignee] \_\_\_\_\_

the within BRAE Corporation 11% Equipment Trust Certificate, First 1979 Series, and does hereby irrevocably constitute and appoint \_\_\_\_\_ attorney to transfer said Certificate on the books of the within-named Trustee, with full power of substitution in the premises.

Dated \_\_\_\_\_

#### PAYMENTS ON ACCOUNT OF PRINCIPAL

<u>Amount of</u> <u>Principal</u> <u>Paid</u>	<u>Installment</u> <u>Maturity</u>	<u>Amount of</u> <u>Prepayment</u>	<u>Authorized</u> <u>Signature</u> <u>of Trustee</u>	<u>Date</u>
---	---------------------------------------	---------------------------------------	--	-------------

WHEREAS it is desired to secure to the holders of the Trust Certificates the payment of the principal thereof, as hereinafter more particularly provided, with interest (and premium, if any) thereon, as hereinafter provided, payable quarterly in each year, and to evidence the rights of the holders of the Trust Certificates in substantially the form hereinbefore set forth:

NOW, THEREFORE, in consideration of the mutual covenants and promises herein contained, the parties hereto hereby agree as follows:

## ARTICLE ONE

### DEFINITIONS

The following terms (except as otherwise expressly provided or unless the context otherwise requires) for all purposes of this Agreement shall have the respective meanings hereinafter specified:

Affiliate of any corporation shall mean any Person which, directly or indirectly controls or is controlled by, or is under common control with, such corporation. For the purposes of this definition, "control" (including "controlled by" and "under control with"), as used with respect to any Person shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting securities or by contract or otherwise. For the purposes of this definition ownership of 5% or more of the equity securities of any corporation (or equity interests in any Person which is not a corporation) shall be deemed to be sufficient to grant the power to direct the management and policies of such corporation or other Person.

Capitalized Lease shall mean any lease of real or personal property under which the Company or any Restricted Subsidiary is the lessee which, in accordance with Generally Accepted Accounting Principles, should be capitalized on the lessee's balance sheet or for which the amount of the asset and liability thereunder as if so capitalized should be disclosed in a note to such balance sheet (excluding leases between the Company and any Restricted Subsidiary or between Restricted Subsidiaries, and leases of office space, automobiles or data processing and office equipment).

Capitalized Lease Rentals shall mean the aggregate amount of fixed rentals payable or to become payable by the Company and its Restricted Subsidiaries with respect to all Capitalized Leases, discounted to present value on the basis of an interest factor equal to the weighted average lease cost of all such Capitalized Leases. The "lease cost" of a Capitalized Lease shall mean: (i) with respect to a lease of new personal property, that interest factor which, when applied to the aggregate amount of all fixed rentals payable during the original term of such lease, will result in a present value equal to the original invoiced cost of such property to the lessor, including any sales taxes, delivery costs and inspection fees; (ii) with respect to a lease of used personal property, that interest factor which, when applied as in the foregoing clause (i) will result in a present value equal to the fair market value of such property at the time it is leased under such lease; and (iii) with respect to a lease of real property, the effective interest rate at which obligations of the United States Government of equal or near equal maturity to that of such lease are trading at the time such property is leased under such lease.

Company shall mean BRAE Corporation, a Delaware corporation, or a successor to it permitted by Section 6.05(g)(iv) hereof.

Consolidated Borrowing Base shall mean the sum of (a) Consolidated Shareholders' Equity and (b) Subordinated Funded Debt.

Consolidated Current Debt shall mean the aggregate of Current Debt of the Company and its Restricted Subsidiaries, determined on a consolidated basis after eliminating all intercompany items and all other items which should be eliminated in accordance with Generally Accepted Accounting Principles.

Consolidated Earnings Available For Interest Coverage shall mean, as of the time of any determination thereof, the sum of (a) Consolidated Net Earnings, (b) all taxes based on income included as expenses in computing Consolidated Net Earnings, and (c) Consolidated Interest Expense, in each case for the 12 months' period next preceding the termination of the most recent fiscal quarter of the Company prior to the date of determination.

Consolidated Funded Debt shall mean the aggregate of Funded Debt of the Company and its Restricted Subsidiaries, determined on a consolidated basis after eliminating all intercompany items and all other items which should be eliminated in accordance with Generally Accepted Accounting Principles.

Consolidated Interest Expense shall mean, as of the time of any determination thereof, the sum of (a) the aggregate interest charges (including amortization of Debt discount) paid or accrued on all Consolidated Funded Debt and on all Consolidated Current Debt (except the portion of rental payments representing interest charges on Capitalized Leases) and (b) one-third of the aggregate rentals paid or accrued by the Company and its Restricted Subsidiaries with respect to all leases of real or personal property (including aggregate rentals paid or accrued with respect to Capitalized Leases), in each case for the 12 months' period next preceding the termination of the most recent fiscal quarter of the Company prior to the date of determination.

Consolidated Net Earnings shall have the meaning assigned to it in Section 6.05(b) hereof.

Consolidated Senior Debt shall mean the aggregate Debt of the Company and its Restricted Subsidiaries except Subordinated Funded Debt, determined on a consolidated basis after eliminating all intercompany items and all other items which should be eliminated in accordance with Generally Accepted Accounting Principles.

Consolidated Senior Funded Debt shall mean the aggregate of Senior Funded Debt of the Company and its Restricted Subsidiaries, determined on a consolidated basis after eliminating all intercompany items and all other items which should be eliminated in accordance with Generally Accepted Accounting Principles.

Consolidated Shareholders' Equity shall mean the sum of (i) the par value (or value stated on the books of the Company) of the issued capital stock of all classes of the Company, plus (or minus in the case of a surplus deficit) (ii) the amount of the consolidated surplus, whether capital or earned, of the Company and its Restricted Subsidiaries, less the aggregate amount of any investments in, or loans or advances to, any Unrestricted Subsidiary or any Persons in which the Company or its Restricted Subsidiaries do not have a majority ownership interest or of which the Company or a Restricted Subsidiary is not the sole general partner.

Consolidated Tangible Net Worth shall mean the gross book value of the assets of the Company and its Restricted Subsidiaries (including leased property to which Capitalized Lease Rentals are applicable, but excluding intangible assets, unamortized Debt discount and expense, goodwill, patents, trademarks, trade names, organization expense, treasury stock, any write-up of assets and other like intangibles), minus (a) all reserves and deductions, including those for depreciation, depletion, amortization, bad debt losses, deferred taxes, and minority interest, (b) all liabilities, and (c) all Restricted Investments, all determined on a consolidated basis in accordance with Generally Accepted Accounting Principles.

Consolidated Working Capital shall mean the excess of consolidated current assets over consolidated current liabilities of the Company and its Restricted Subsidiaries, both determined in accordance with Generally Accepted Accounting Principles, provided that there shall not be included in current assets (i) any loans (other than Investments) or advances made by the Company or any Restricted Subsidiary except travel and other like advances to officers and employees in the ordinary course of business, nor (ii) any assets located outside (including any amounts payable by Persons located outside) the United States of America and the Dominion of Canada.

Corporate Trust Office shall mean the principal office of the Trustee in the State of New York, The City of New York, at which the corporate trust business of the Trustee shall, at the time in question, be administered which office is, on the date of execution of this Agreement, located at 30 West Broadway, New York, New York 10015.

Cost, when used with respect to the Equipment not built by the Company or any Affiliate of the Company, shall mean the actual cost thereof to the Company or such Affiliate, and, in respect of Equipment built by the Company or any such Affiliate, shall mean so-called "car builder's cost" including direct cost of labor and material and overhead (including, without limitation, inspection and delivery charges and sales taxes), but excluding any manufacturing profit.

Current Debt--See Funded Debt.

Debt--See Funded Debt.

Default--See Event of Default.

Deposited Cash shall mean the aggregate of (a) the proceeds from the sale of the Trust Certificates deposited with the Trustee pursuant to Section 2.01 hereof and, when required or indicated by the context, any Investments purchased by the use of such proceeds pursuant to the provisions of Section 8.04 hereof, and (b) any sums restored to Deposited Cash from rentals pursuant to Section 4.04(1) hereof and on deposit with the Trustee.

Equipment shall mean standard-gauge railroad freight box cars (AAR Mechanical Designations XM, XF, XL ~~and~~ XP) which were placed in service on or after June 1, 1979. *or*

Event of Default shall mean any event specified in Section 5.01 hereof to be an event of default, provided that there has been satisfied any requirement in connection with such Event of Default for the giving of notice, or the lapse of time, or the happening of any further condition, event or act. Default shall mean any of such events, whether or not such requirement has been satisfied.

Funded Debt shall mean any obligation payable more than one year from the date of the creation thereof which under Generally Accepted Accounting Principles is shown on the balance sheet as a liability (excluding reserves for deferred income taxes and other reserves to the extent that such reserves do not constitute an obligation), plus (without duplication) (a) all guarantees or endorsements, direct or indirect, of any Debt or obligations of others, including obligations described in Section 6.05(j) hereof (except endorsements of negotiable instruments for collection in the ordinary course of business and indemnities not substantially equivalent to a guarantee of borrowed money which are given in the ordinary course of business), (b) Capitalized Lease Rentals, and (c) the maximum amount of Current Debt outstanding (other than the current portion, if any, of Funded Debt) during the 45-day period referred to in Section 6.05(d)(vii) hereof, as of the date of any determination of Funded Debt. Current Debt shall mean any obligation for borrowed money (and any notes payable and drafts accepted representing extensions of credit whether or not representing obligations for borrowed money) payable on demand or within a period of one year from the date of any determination thereof and in any event including the current portion, if any, of Funded Debt; provided, however, that any obligation shall be treated as Funded Debt, regardless of its term, if such obligation is renewable pursuant to the terms thereof or of



a revolving credit or similar agreement effective for more than one year after the date of the creation of such obligation, or may be payable out of the proceeds of a similar obligation pursuant to the terms of such original obligation or of any agreement related to such original obligation; and provided, further, that the entire amount of any obligation for borrowed money which is incurred solely for the purpose of financing railroad equipment or other transportation equipment, which is secured by a Lien thereon and which is payable in substantially equal installments over the entire term of such obligation shall be deemed to be Funded Debt notwithstanding the fact that a portion of such obligation may be payable within a period of one year from the date of the creation thereof. Any obligation secured by a Lien on, or payable out of the proceeds of production from, property of the Company or any Restricted Subsidiary shall be deemed to be Funded or Current Debt, as the case may be, of the Company or such Restricted Subsidiary even though such obligation shall not be assumed by the Company or such Restricted Subsidiary, but in the event that such obligation of the Company or any Restricted Subsidiary is incurred in connection with an equity investment made by the Company or any Restricted Subsidiary as an integral part of a leveraged lease financing of transportation equipment and such Lien shall not encumber any property of the Company or any Restricted Subsidiary other than such transportation equipment, then the amount of Debt attributable to the Company or such Restricted Subsidiary, as the case may be, by reason of such obligation shall be determined in accordance with Generally Accepted Accounting Principles. Debt shall mean Funded Debt or Current Debt, as the case may be.

Generally Accepted Accounting Principles shall mean generally accepted accounting principles in effect at the time of any computation hereunder where the character or amount of any asset or liability or item of income or expense is required to be determined or any consolidation or other accounting computation is required to be made.

Holder, when used with respect to Trust Certificates, shall include the plural as well as the singular number and shall mean the Person in whose name such Trust Certificate is registered.

Investments shall mean (i) certificates of deposit of commercial banks or trust companies incorporated under the laws of the United States of America or any state thereof having capital and surplus aggregating not less than \$75,000,000, in each case maturing within one year after the

date of investment therein, (ii) open market commercial paper rated "Prime-1" or better by Moody's Investors Service, Inc., or rated "A-1" or better by Standard & Poor's Corporation (or a comparable rating by any successor to either of their businesses), in each case maturing within 270 days after the date of investment therein, (iii) bonds, notes or other direct obligations of the United States of America or obligations for which the full faith and credit of the United States of America are pledged to provide for the payment of the interest and principal, in each case maturing within one year after the date of investment therein, and (iv) purchases from any commercial bank or trust company referred to in clause (i) above of direct obligations of the United States of America or obligations for which the full faith and credit of the United States of America are pledged to provide for the payment of the interest and principal of any maturity, pursuant to repurchase agreements obligating such bank or trust company to repurchase any such obligation not later than 90 days after the purchase of any such obligation.

Lease shall mean a lease agreement substantially in the form attached hereto as Schedule C covering Trust Equipment if (i) such lease agreement permits the Company to terminate the lease agreement if utilization and/or mileage is below a specified minimum, (ii) the lesser of (A) the present value of the anticipated rentals under such lease agreement with respect to such Trust Equipment and (B) the present value of the rentals computed at the specified minimum referred to in clause (i) above under such lease agreement with respect to such Trust Equipment will be at least equal to 117.5% of the present value of the aggregate rentals payable by the Company pursuant to Sections 4.04(3) and 4.04(4) with respect to such Equipment (present values to be determined by employing a 11% discount rate and assuming, when in the case of such Equipment described in clause (i) above no mileage minimum is specified, mileage of 60 miles per day) and (iii) such lease agreement (x) provides in substantially the terms of the second sentence of Section 7A of the form of lease agreement attached hereto as Schedule C that it is subject to the rights and remedies of the Trustee hereunder, (y) contains substantially the terms of (1) the second sentence of Section 4A, (2) the second sentence of Section 13A and (3) Section 13B and (z) has an original term not less than the lesser of 15 years or the remaining maturity of the Trust Certificates.

Lease Assignment shall mean an assignment of a Lease or other lease authorized pursuant to Section 4.09 hereof to the Trustee in substantially the form annexed hereto as Schedule D executed by the Company.

Lien shall mean any mortgage, pledge, security interest, encumbrance, lien or charge of any kind (including any agreement to give any of the foregoing, any conditional sale or other title retention agreement, any lease in the nature thereof, and the filing of or agreement to give any financing statement under the Uniform Commercial Code of any jurisdiction).

Officer's Certificate shall mean a certificate signed by the President or a Vice President of the Company.

Opinion of Counsel shall mean an opinion in writing signed by legal counsel satisfactory to the Trustee and who may be counsel for the Company or an employee of the Company. The acceptance by the Trustee of, together with its action on, an Opinion of Counsel shall be sufficient evidence that such counsel is satisfactory to the Trustee.

Original Purchaser shall mean The Equitable Life Assurance Society of the United States and any Affiliate thereof.

Owner shall mean the manufacturer or the Company or other Person transferring title to any of the Equipment to the Trustee.

Person shall mean and include an individual, a partnership, a joint venture, a corporation, a trust, an unincorporated organization and a government or any department or agency thereof.

Preferred Stock shall mean the 1,000 shares of the Company's 9-1/4% Senior Cumulative Preferred Stock and the 500 shares of the Company's 9-1/4% Junior Cumulative Convertible Preferred Stock outstanding on the date of this Agreement.

Purchase Money Debt shall mean any Debt of any Restricted Subsidiary secured by any Lien permitted by clause (v), (vi) or (vii) of Section 6.05(c) hereof to be created, assumed or suffered to exist by such Restricted Subsidiary.

Replacement Funds shall have the meaning assigned to it in Section 8.04 hereof.

Request shall mean a written request for the action therein specified, delivered to the Trustee, dated not more than 10 days prior to the date of delivery to the Trustee and signed on behalf of the Company by the President or a Vice President of the Company.

Restricted Investments shall mean (a) any investment by the Company and its Restricted Subsidiaries in any property of any other Person, (b) any purchase of any stock or other securities or evidences of indebtedness by the Company and its Restricted Subsidiaries of any other Person, and (c) any capital contributions, loans or advances (including the amount by which the fair market value exceeds the cost basis of any property sold or transferred) by the Company and its Restricted Subsidiaries to any other Person, provided, that in computing any such investment:

(i) undistributed earnings of, and interest accrued in respect of Debt owing by, the Person, accrued after the date of the investment, shall not be included;

(ii) there shall not be deducted from the amounts invested in the Person any amounts received as earnings (in the form of dividends or interest or otherwise) on the investment in, or as loans from, such Person;

(iii) increases or decreases in value, or write-ups, write-downs or write-offs, of investments in the Person shall be disregarded (except to the extent that any loss on an investment has been recognized in reducing the net income of the Company or a Restricted Subsidiary);

(iv) there shall be included all bonds, debentures, notes and accounts receivable from such Person which are not current assets or did not arise from sales to the Person as a customer in the ordinary course of business; and

(v) a guarantee or other contingent liability in respect of any Debt of the Person, shall be deemed an investment equal to the principal amount of the Debt.

Restricted Subsidiary shall mean any Subsidiary 80% or more of the stock of every class of which, except directors'

qualifying shares, shall be owned by the Company either directly or through other Restricted Subsidiaries, and which has been designated by the Board of Directors or an Executive Committee of the Board of Directors as a Restricted Subsidiary; provided, however, that the Company shall not designate any Unrestricted Subsidiary as a Restricted Subsidiary within the three years immediately after such Unrestricted Subsidiary had been designated an Unrestricted Subsidiary. The Company shall not designate any Restricted Subsidiary as an Unrestricted Subsidiary unless after giving effect to such designation (i) such Subsidiary shall not own any capital stock or Debt of any other Restricted Subsidiary, (ii) there shall exist no Event of Default or Default, and (iii) the tangible net worth of such Subsidiary (computed in the same manner as Consolidated Tangible Net Worth) shall not constitute 5% or more of Consolidated Tangible Net Worth and such Subsidiary shall not have contributed 5% or more of an amount equal to the average of Consolidated Net Earnings for the last three fiscal years prior to such designation; provided, however, that the Company shall not designate any Restricted Subsidiary as an Unrestricted Subsidiary within the three years immediately after such Restricted Subsidiary had been designated a Restricted Subsidiary.

Senior Funded Debt shall mean all Funded Debt of the Company or any Restricted Subsidiary except Funded Debt which is Subordinated Funded Debt.

Subordinated Funded Debt shall mean Funded Debt of the Company which:

(1) is evidenced by promissory notes or is issued pursuant to an indenture or other agreement to which reference shall be made in the promissory notes issued pursuant thereto containing provisions with respect to subordination substantially as follows:

"The Company covenants and agrees, and the holder of this Note by his acceptance hereof likewise covenants and agrees as follows:

"(a) the principal of and interest on this Note are and shall be subordinated in right of payment in all respects to (i) the 11% Equipment Trust Certificates of the Company due October 31, 1994, in the original aggregate principal amount of \$38,000,000,

issued pursuant to the Equipment Trust Agreement between Morgan Guaranty Trust Company of New York, as Trustee, and the Company dated as of November 1, 1978, as amended by a First Amendment dated as of March 1, 1979, (ii) the 11% Equipment Trust Certificates of the Company due December 1, 1994, in the original aggregate principal amount of \$20,000,000, issued pursuant to the Equipment Trust Agreement between Morgan Guaranty Trust Company of New York, as Trustee, and the Company, dated as of June 1, 1979, and (iii) all other Senior Funded Debt (as defined in either of the foregoing Equipment Trust Agreements); such Equipment Trust Certificates and all such other Senior Funded Debt of the Company are herein collectively called 'Senior Debt';

"(b) without limiting the next preceding subparagraph, (i) no payment on account of principal of, or interest on, this Note shall be made if at the time of such payment an Event of Default or Default (as defined in either Equipment Trust Agreement referred to in paragraph (a) above) exists, or if immediately after giving effect to such payment an event of default or default would exist, under the provisions of any Senior Debt or any agreement under which Senior Debt is then outstanding, and (ii) in the event of any insolvency or bankruptcy proceedings, and any receivership, liquidation, reorganization or other similar proceedings in connection therewith, relative to the Company or its property, and in the event of any proceedings for voluntary liquidation, dissolution or other winding up of the Company, whether or not involving insolvency or bankruptcy proceedings, then all principal of, and premium, if any, and interest on, the Senior Debt shall first be paid in full before any payment on account of principal or interest is made upon this Note, and in any such proceedings any payment or distribution of any kind or character, whether in cash, securities or other property, to which the holder of this Note would be entitled if this Note were not

subordinated to the Senior Debt shall be paid by the liquidating trustee or agent or other person making such payment or distribution, or by the holder of this Note if received by such holder, directly to the holders of the Senior Debt to the extent necessary to make payment in full of the Senior Debt remaining unpaid, after giving effect to any concurrent payment or distribution to or for the holders of the Senior Debt; subject to the prior payment in full of the Senior Debt, the holder of this Note shall be subrogated to the rights of the holders of the Senior Debt to receive payments or distributions of cash, property or securities of the Company applicable to the Senior Debt until the principal of, and interest on, this Note shall be paid in full, and no such payments or distributions to the holder of this Note of cash, property or securities otherwise distributable in respect of the Senior Debt shall, as between the Company, its creditors other than the holders of the Senior Debt, and the holder of this Note, be deemed to be a payment by the Company on account of this Note;

"(c) in the event that the holder of this Note shall receive any payment on this Note which such holder is not entitled to receive under the provisions of the foregoing subparagraph (b), it will hold any amount so received in trust for the holders of Senior Debt and will forthwith turn over such payment to the holders of Senior Debt in the form received to be applied to the Senior Debt;

"(d) the holders of Senior Debt may, at any time and from time to time, without the consent of or notice to the holder of this Note, without incurring responsibility to the holder of this Note and without impairing or releasing the obligations of the holder of this Note hereunder to the holders of Senior Debt: (i) change the manner, place or terms of payment or change or extend the time of payment of, or renew or alter any of the Senior Debt (including any change in the rate of interest thereon), or amend in any manner

any agreement under which Senior Debt is outstanding; (ii) sell, exchange, release or otherwise deal with any property by whomsoever at any time pledged or mortgaged to secure, or howsoever securing, any of the Senior Debt; (iii) release anyone liable in any manner for the collection of the Senior Debt; (iv) exercise or refrain from exercising any rights against the Company and others; and (v) apply any sums by whomsoever paid or howsoever realized to the Senior Debt; and

"(e) the foregoing provisions regarding subordination are and are intended solely for the purpose of defining the relative rights of the holders of the Senior Debt on the one hand and the holder of this Note on the other hand; nothing contained in this Note is intended to or shall impair, as between the Company and the holder of this Note, the obligation of the Company, which is unconditional and absolute, to pay to the holder of this Note the principal of, premium, if any, and interest on, this Note as and when the same shall become due in accordance with its terms, subject, however, to the rights under the foregoing subparagraphs of the holders of the Senior Debt"; and

(2) on the date on which the status of such Funded Debt is determined for any purpose hereof,

(a) has a weighted average life at least as long as the remaining weighted average life of the Trust Certificates, and

(b) is not subject to payment, redemption or other retirement by means of any installment, sinking fund, serial maturity or other required payments which would result in or permit such Funded Debt to have a weighted average life shorter than the remaining weighted average life of the Trust Certificates.

Subsidiary shall mean any corporation organized under the laws of any state of the United States of America, the Dominion of Canada, or any Province of Canada, which conducts the major portion of its business in the United States of



America or the Dominion of Canada, or both, and 80% or more of the stock of every class of which, except directors' qualifying shares, shall be owned by the Company either directly or through Subsidiaries.

Trust Certificates shall mean BRAE Corporation 11% Equipment Trust Certificates, First 1979 Series, together with the guarantee of the Company endorsed thereon, issued hereunder.

Trust Equipment shall mean all Equipment at any time subject to the terms of this Agreement.

Trustee shall mean MORGAN GUARANTY TRUST COMPANY OF NEW YORK, and, subject to the provisions of Article Eight, any successor as trustee hereunder.

Unrestricted Subsidiary shall mean any Subsidiary that is not designated as a Restricted Subsidiary. The Company shall not designate any Unrestricted Subsidiary as a Restricted Subsidiary unless after giving effect to such designation (i) the Company and its Restricted Subsidiaries shall be able to incur at least One Dollar of additional Consolidated Senior Funded Debt in compliance with the provisions of Section 6.05(d) hereof and (ii) there shall exist no Event of Default or Default.

Written Direction shall mean a direction or statement in writing by the Original Purchaser which is a Holder of Trust Certificates, signed by a Vice President or an Assistant Vice President of the Original Purchaser and addressed to the Trustee with a copy to the Company. Any provision of this Agreement requiring or authorizing a Written Direction prior to the taking of any action by the Trustee or the Company shall, if at the time thereof the Original Purchaser is not the Holder of all Trust Certificates, be based upon a Written Direction of institutional investors which each hold 3% or more in principal amount of the then outstanding Trust Certificates, pursuant to the direction of such investors holding more than 50% of the principal amount of Trust Certificates held by such investors. Any provision of this Agreement requiring or authorizing a Written Direction prior to the taking of any action by the Trustee or the Company shall not be applicable if, at the time hereof, each institutional investor which is a Holder of Trust Certificates holds less than 3% in principal amount of the then outstanding Trust Certificates. In that event, such action may be taken by the Trustee or the Company,

as the case may be, without reference to the requirement of such Written Direction, and no other direction or authorization shall be required from any other Holder of Trust Certificates unless otherwise specifically required pursuant to this Agreement.

The words herein, hereof, hereby, hereto, hereunder and words of similar import refer to this Agreement as a whole and not to any particular Article, Section, paragraph or subdivision hereof.

## ARTICLE TWO

### TRUST CERTIFICATES AND ISSUANCE THEREOF

SECTION 2.01. Issuance of Trust Certificates. An amount equal to the proceeds of the sale of any of the Trust Certificates, but not less than the aggregate principal amount thereof, shall, forthwith upon the issuance thereof, be deposited in cash with the Trustee by or on behalf of the Company. The amount of such proceeds shall be specified in an Officer's Certificate delivered to the Trustee concurrently with such deposit.

Thereupon, the Trustee shall from time to time issue and deliver Trust Certificates in such aggregate principal amount as the Company shall direct by Request.

Subject to the provisions of Sections 2.06 and 2.07 of this Agreement, the aggregate principal amount of Trust Certificates which shall be executed and delivered by the Trustee under this Section shall not exceed the sum of \$20,000,000, and the aggregate principal amount represented by all the Trust Certificates shall be payable as hereinafter set forth.

SECTION 2.02. Interests Represented by Trust Certificates; Interest; Maturity. Each of the Trust Certificates shall represent an interest in the amount therein specified in the trust created hereunder. The principal amount of each Trust Certificate originally issued hereunder will be payable in 60 consecutive quarterly installments, each such quarterly installment being in an amount obtained by subtracting the interest due thereon on such date from 3.422% of the original principal amount thereof, on March 1, June 1, September 1 and December 1 of each year, commencing

March 1, 1980 and ending December 1, 1994, except to the extent that prepayments are applied to the installments as provided in Section 2.03(d) hereof (the final installment being in any event in an amount equal to the remaining principal amount owing on such Trust Certificate). In the event that any Trust Certificate originally issued hereunder is divided into more than one Trust Certificate pursuant to Section 2.06 hereof, the original principal amount of such originally issued Trust Certificate shall be proportionately divided among such subsequently issued Trust Certificates and shall be deemed to be the original principal amount of such subsequently issued Trust Certificates. Similarly, upon the division of any such subsequently issued Trust Certificate, the proportion of the original principal amount of the Trust Certificate originally issued hereunder which was allotted to such subsequently issued Trust Certificate pursuant to the next preceding sentence shall likewise be proportionately divided among the Trust Certificates issued in exchange therefor and shall be deemed to be the original principal amount of such Trust Certificates. Each Trust Certificate will bear interest on the unpaid principal amount thereof, payable on March 1, June 1, September 1 and December 1 of each year, commencing on the first date occurring after the date of issue thereof (provided that any interest payable hereunder within 30 days after the original issuance thereof shall be carried over to the next date interest is payable thereunder), at the rate of 11% per annum, with interest payable in each case on any overdue principal and interest, to the extent legally enforceable, at the rate of 12% per annum. Interest on Trust Certificates shall be calculated on the basis of a 360-day year of 12 30-day months. The Trust Certificates are issuable in denominations of at least \$25,000 or any integral multiple of \$1,000 greater than \$25,000.

The principal of and interest on the Trust Certificates shall be payable at the Corporate Trust Office in such coin or currency of the United States of America as, at the time of payment, shall be legal tender for the payment of public and private debts, but only from and out of rentals or other moneys received by the Trustee and applicable to such payment under the provisions hereof. Notwithstanding the provisions of the preceding sentence of this paragraph, in the case of payments of principal and interest to be made on a Trust Certificate not then to be paid in full, upon request of the Holder of such Trust Certificate and concurrence by the Company in such request and upon deposit

of an agreement of the Holder of such Trust Certificate obligating such Holder, prior to any transfer or other disposition thereof, to surrender the same to the Trustee for notation thereon of the installments of principal amount represented thereby theretofore paid in whole or in part, the Trustee will mail its check on the date each such payment is due to such registered Holder at his address shown on the registry books maintained by the Trustee; provided, however, that this paragraph shall not apply to the Original Purchaser, its Affiliates or any institutional investor which is a Holder of 3% or more in principal amount of the then outstanding Trust Certificates, and the Trustee shall make payments of principal and interest to the Original Purchaser, its Affiliates or such Holder by wire transfer of immediately available funds (to the extent the Company makes such funds available to the Trustee) to such Original Purchaser's or such Holder's bank account, the number of which account shall be supplied to the Trustee by the Company and is for the time being designated in the purchase agreement relating to the Trust Certificates.

SECTION 2.03. Prepayments. (a) Optional Prepayments Without Premium. (1) The Trust Certificates are subject to prepayment, in each case without premium, as provided in Sections 4.06 and 4.08 hereof.

(2) The Trust Certificates are subject to prepayment, at the option of the Company, without premium, on any date on which one of the installment payments of principal is to be made pursuant to the provisions of Section 2.02 in amounts not exceeding the amount of the installment payment of principal to be made on such date, such option to be non-cumulative; provided, however, that the aggregate principal amount of all Trust Certificates which may be prepaid pursuant to this paragraph (2) shall not exceed 20% of the aggregate original principal amount of the Trust Certificates which are issued hereunder.

(b) Optional Prepayments With Premium. The Trust Certificates are subject to prepayment, at the option of the Company, in whole or from time to time in part (in multiples of \$1,000), on any interest payment date at 111% of the principal amount so prepaid if prepaid on or before December 1, 1983, and thereafter at the following applicable percentage of the principal amount so prepaid:

If prepaid during the 12 months' period ending

on December 1,

<u>Year</u>	<u>Percentage</u>	<u>Year</u>	<u>Percentage</u>
1984	110	1990	104
1985	109	1991	103
1986	108	1992	102
1987	107	1993	101
1988	106	1994	100
1989	105		

; provided, however, that the Company may not make prepayment of the Trust Certificates pursuant to this Section 2.03(b) unless (i) in the case of any such prepayment of the Trust Certificates prior to December 1, 1989, such prepayment is not being made as a part of a refunding or anticipated refunding operation, by the application, directly or indirectly, of (1) borrowed funds either (a) having an interest rate or an interest cost to the Company (computed in accordance with accepted financial practice) of less than 11% per annum, or (b) evidenced by obligations having a maturity date earlier than the maturity date of the Trust Certificates or a weighted average life shorter than the remaining weighted average life of the Trust Certificates, or (c) subject to payment, redemption or other retirement by means of any installment, sinking fund, serial maturity or other required payments at a rate greater than the rate at which the outstanding Trust Certificates shall be payable as provided herein and in the Trust Certificates, or (2) funds obtained from the issuance of preferred stock either (a) having a dividend rate (expressed as a percentage of original liquidation value and computed in accordance with accepted financial practice) which, after being divided by a fraction the numerator of which is the Consolidated Net Income during the period commencing April 1, 1979, and ending on the last day of the fiscal month next preceding the date of issuance of such preferred stock and the denominator of which is such Consolidated Net Income before the provision for income taxes for such period, is less than 11% per annum or (b) having a final mandatory redemption date earlier than the maturity date of the Trust Certificates or a weighted average life shorter than the remaining weighted average life of the Trust Certificates, or (c) subject to payment, redemption or other retirement by means of any installment, sinking fund, serial maturity or other required payments at a rate greater than the rate at which the outstanding Trust Certificates shall be payable as provided herein and in the Trust Certificates, (ii) such prepayment will not reduce

Consolidated Working Capital below an amount which is considered adequate by the officers of the Company for the safe conduct of the business of the Company and its Subsidiaries without the necessity of creating additional Funded or Current Debt or issuing additional preferred stock to replace funds used to make such prepayment and (iii) the Company shall have delivered to the Trustee an Officer's Certificate to all such effects, at least 30 days prior to the date of such prepayment.

(c) Notice of Prepayment. In case the Company shall desire to prepay all or any part of the Trust Certificates, it shall give written notice of such prepayment to the Trustee and to the Holders of the Trust Certificates, not less than 30 days nor more than 60 days prior to the prepayment date, specifying such prepayment date, the principal amount of the Trust Certificates to be prepaid on such date and the Section pursuant to which such prepayment is to be made, whereupon the principal amount of the Trust Certificates specified in such notice, together with the premium, if any, herein provided, shall become due and payable on the prepayment date, and such notice shall be accompanied by an Officer's Certificate as to the compliance by the Company with the applicable provisions of Section 2.03 hereof.

(d) Application of Prepayment. Each prepayment under Section 2.03(a) or (b) hereof shall be applied to the prepayment of the installments of principal of the Trust Certificates so that each installment due and payable under each such Trust Certificate after such prepayment shall be reduced in the same proportion as the then outstanding principal amount of such Trust Certificate shall have been reduced by such prepayment. All prepayments hereunder are to be made pro rata on each outstanding Trust Certificate. In the event of any partial prepayment of the Trust Certificates pursuant to Section 2.03(a)(1) hereof, the Company within 60 days after such prepayment shall prepare and deliver to the Trustee and each of the Holders of a Trust Certificate a recomputed schedule of the principal and interest payments to be made thereafter on the Trust Certificates.

(e) Deposit of Funds. In any case where notice of prepayment shall have been given, the Company will on or before the prepayment date deposit or cause to be deposited with the Trustee an amount of cash sufficient to effect the prepayment of the Trust Certificates specified in such

notice, or it may direct the Trustee to apply for such purpose, to the extent that they are available, any moneys held by the Trustee which may be applied to the prepayment of Trust Certificates pursuant to Sections 3.04, 4.06 and 4.08 hereof. The Trustee shall apply any funds deposited pursuant to this Section 2.03(e) as provided in Section 2.03(d) hereof.

(f) Transfer of Title. Upon any prepayment of the Trust Certificates pursuant to Section 2.03(a) or 2.03(b) hereof, the Trustee shall execute and deliver a bill of sale assigning and transferring to the transferee named by the Company all the right, title and interest of the Trustee in and to such units of Trust Equipment as are equal in aggregate value to the amount of any such prepayment. For purposes of this Section value shall be determined in the manner provided in clause (i) of the last paragraph of Section 4.06 hereof. Upon any prepayment of the Trust Certificates pursuant to Section 2.03(a)(2) or 2.03(b) hereof, the Company shall select the lease or leases permitted by Section 4.09 under which the units to be assigned or transferred are then being leased. Subject to the preceding sentence, the units of Trust Equipment shall be assigned and transferred to the extent possible in consecutive order of the identification numbers required to be placed on the units of Trust Equipment pursuant to Section 4.07, or the units shall be selected in any other reasonable manner agreed to by the Trustee pursuant to a Written Direction, commencing with the identification number chosen by the Trustee, which number shall be chosen in a manner, if possible, to insure that the units as assigned and transferred are leased by the Company under only one of the leases permitted by Section 4.09 hereof.

(g) Purchase Prohibition. The Company will not, and will not permit any Subsidiary to, acquire directly or indirectly, by purchase or prepayment or otherwise, any of the outstanding Trust Certificates or any part thereof except by way of payment or prepayment by the Company in accordance with the provisions of the Trust Certificates and of this Agreement or by way of a pro rata offer to all the Holders of Trust Certificates.

SECTION 2.04. Forms of Trust Certificates and Guarantee. The Trust Certificates and the guarantee to be endorsed on the Trust Certificates by the Company as provided in Section 6.01 hereof shall be in substantially the forms hereinbefore set forth.

SECTION 2.05. Execution by Trustee. The Trust Certificates shall be signed in the name and on behalf of the Trustee by the manual or facsimile signature of its President or one of its Vice Presidents or one of its Trust Officers and its corporate seal or a facsimile thereof shall be affixed or imprinted thereon and attested by the manual signature of one of its Assistant Secretaries. In case any officer of the Trustee whose signature, whether facsimile or not, shall appear on any of the Trust Certificates shall cease to be such officer of the Trustee before such Trust Certificates shall have been issued and delivered by the Trustee or shall not have been acting in such capacity on the date of such Trust Certificates, such Trust Certificates may be adopted by the Trustee and be issued and delivered as though such person had not ceased to be or had then been such officer of the Trustee.

SECTION 2.06. Characteristics of Trust Certificates.  
(a) The Trust Certificates shall be registered, as to both principal and interest, in the name of the Holder; shall be transferable in whole or in part and exchangeable for Trust Certificates of other denominations of equal aggregate outstanding principal amount and of the same maturities, upon presentation and surrender thereof for registration of transfer or exchange at the Corporate Trust Office, accompanied, in the case of transfer, by appropriate instruments of assignment and transfer, duly executed by the registered Holder of the surrendered Trust Certificate or Certificates or by a duly authorized attorney in form satisfactory to the Trustee; shall, in connection with the initial issuance of Trust Certificates, be dated as of the date of issuance and shall, in connection with Trust Certificates issued in exchange for or upon registration of transfer of another Trust Certificate or Certificates, be dated as of the date to which interest has been paid or shall, if no interest has been paid thereon, be dated as of the date of initial issuance; and shall entitle the registered Holder to interest from the date thereof. The Trustee shall, if any payment or prepayment shall theretofore have been made pursuant to Section 2.03, endorse on each Trust Certificate issued upon registration of transfer or exchange a notation thereon as to the fact that the installments of principal thereon will be payable in installments as set forth in such notation. The several denominations of Trust Certificates shall be interchangeable in authorized denominations at the Corporate Trust Office.

(b) Anything contained herein to the contrary notwithstanding, prior to due presentment for registration of transfer, the parties hereto may deem and treat the registered Holder of any Trust Certificate as the absolute owner of such Trust Certificate for all purposes and shall not be affected by any notice to the contrary.



(c) The Trustee shall cause to be kept at the Corporate Trust Office books for the registration and registration of transfer of the Trust Certificates and, upon presentation of the Trust Certificates for such purpose, the Trustee shall register any transfer as hereinabove provided, and under such reasonable regulations as it may prescribe.

(d) For any registration, registration of transfer or exchange, the Trustee shall require payment by the Person requesting same of a sum sufficient to reimburse it for any governmental charge or other expense connected therewith.

(e) Each Trust Certificate delivered pursuant to any provision of this Agreement in exchange for, or upon the registration of transfer of the whole or any part, as the case may be, of one or more other Trust Certificates shall carry all the rights to principal and to interest accrued and unpaid and to accrue, which were carried by the whole or such part, as the case may be, of such one or more other Trust Certificates, and, notwithstanding anything contained in this Agreement, such Trust Certificate shall be so dated that neither gain nor loss in interest or principal shall result from such exchange, substitution or registration of transfer.

(f) The Trustee shall not be required to issue, transfer or exchange Trust Certificates for a period of 10 days next preceding any interest payment date.

(g) Each Trust Certificate issued in an original principal amount of less than \$150,000 shall contain a legend in substantially the following form:

"THE SECURITIES REPRESENTED BY THIS TRUST CERTIFICATE HAVE BEEN ACQUIRED FOR INVESTMENT AND HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933."

SECTION 2.07. Replacement of Lost Trust Certificates. In case any Trust Certificate shall become mutilated or defaced or be lost, destroyed or stolen, then on the terms herein set forth, and not otherwise, the Trustee shall execute and deliver a new Trust Certificate of like tenor and date, and bearing such identifying number or designation as the Trustee may determine, in exchange and substitution for, and upon cancelation of, the mutilated or defaced Trust Certificate, or in lieu of and in substitution for the same if lost, destroyed or stolen. The Company shall execute its guarantee on any Trust Certificate so delivered. The applicant for a new Trust Certificate pursuant to this Section shall furnish to the Trustee and to the Company, evidence to their satisfaction of the loss, destruction or theft of such Trust Certificate

alleged to have been lost, destroyed or stolen and of the ownership and authenticity of such mutilated, defaced, lost, destroyed or stolen Trust Certificate, and also shall furnish such security or indemnity as may be required by the Trustee and by the Company (provided that in the case of the Original Purchaser, its unsecured agreement of indemnification shall be deemed sufficient security or indemnity), and shall pay all expenses and charges of such substitution or exchange. All Trust Certificates are held and owned upon the express condition that the foregoing provisions are exclusive in respect of the replacement of mutilated, defaced, lost, destroyed or stolen Trust Certificates and shall preclude any and all other rights and remedies, any law or statute now existing or hereafter enacted to the contrary notwithstanding.

### ARTICLE THREE

#### ACQUISITION OF TRUST EQUIPMENT BY TRUSTEE; DEPOSITED CASH

##### SECTION 3.01. Acquisition of Equipment by Trustee.

The Company shall sell or cause to be sold, assigned and transferred to the Trustee, as trustee for the Holders of the Trust Certificates, the Equipment described in Schedule A hereto, as supplemented; all of which the Company represents was new Equipment fit for its designated purpose when first put into service, was first put into service not earlier than June 1, 1979, and has an estimated useful life beyond December 1, 1994. Such Equipment shall be delivered to the Person or Persons designated by the Trustee as its agent or agents to receive such delivery (and, in the case of such Equipment, the Trustee hereby designates the officers or agents of the Company) and the certificate of any such agent or agents as to such delivery shall be conclusive evidence of such delivery.

In the event that (a) the Company shall deem it necessary or desirable to procure for the use of the Company, and to include in the trust hereby created, other Equipment in lieu of any units of the Equipment described in Schedule A hereto prior to the acceptance of such Equipment by the Trustee, (b) any unit of the Equipment (hereinafter in this paragraph called the "Casualty Equipment") described in Schedule A hereto, as supplemented, shall suffer a Casualty Occurrence, as defined in Section 4.08, before being accepted by the Trustee pursuant to this Section and Section 3.03, or (c) it is necessary to include in the trust hereby created additional Equipment in order to utilize all the Deposited Cash, the Company may, subject to the receipt by the Trustee of a Written Direction consenting thereto, sell or cause to

be sold to the Trustee such other Equipment first put into service not earlier than June 1, 1979, to be substituted under the trust, subject to the provisions of Section 4.06; provided, however, that receipt of such a Written Direction shall not be required if (i) such other Equipment (hereinafter in this paragraph called the "Replacing Equipment") is being substituted or added pursuant to clause (b) or clause (c) above and is of the same type as any Equipment listed on Schedule A hereto and, in the case of Equipment substituted pursuant to clause (b) above, is in as good condition as such Equipment was immediately prior to such Casualty Occurrence, (ii) the Replacing Equipment has been leased by the Company to any lessee listed on Schedule A hereto (or a different lessee pursuant to a Lease), and (iii) the Company shall have furnished to the Trustee and the Original Purchaser an Officer's Certificate to the foregoing effects.

SECTION 3.02. Payment of Deposited Cash. From time to time, when and as any Equipment shall have been accepted by the Trustee pursuant to Sections 3.01 and 3.03(a), the Trustee shall pay, upon Request, to the Company against receipt therefor, or as it may direct only out of Deposited Cash then held by the Trustee an amount not exceeding the sum of 80% of the Cost of such Equipment, as such Cost is specified in the Officer's Certificate furnished to the Trustee pursuant to Section 3.03(b).

SECTION 3.03. Supporting Papers. The Trustee shall not pay out any Deposited Cash for the purchase of any unit of Equipment unless and until it shall have received:

(a) a bill of sale covering such unit of Equipment from the Owner to the Trustee, which bill of sale shall specify such unit of Equipment described therein by a number or numbers and shall contain a warranty or guarantee to the Trustee that the title of such unit of Equipment described therein is free from all Liens (except as permitted by clauses (i), (ii) and (iii) of Section 6.05(c), the rights of the Company under this Agreement and any lease permitted by Section 4.09), and the receipt of such bill of sale by the Trustee shall constitute acceptance by the Trustee hereunder of such unit of Equipment as Trust Equipment;

(b) an Officer's Certificate, which shall state (i) that such unit of Equipment is Equipment as herein defined, has been marked in accordance with Section 4.07 and was not put into service prior to the date specified therein and identifying the builder thereof, (ii) that the Cost of such unit of Equipment is an amount therein specified or is not less than an amount therein specified and (iii) that such unit is subject to one of the Leases described in Schedule A hereto, as such Schedule may, subject to approval thereof contained in a Written Direction if required, have been supplemented by the Company;

(c) an invoice from the Owner of such unit of Equipment having endorsed thereon a certification by the Company as to the correctness of the price stated therein;

(d) an Opinion of Counsel for the Owner to the effect that such bill of sale is valid and effective, either alone or in connection with any other instrument referred to in and accompanying such opinion, to vest in the Trustee title to such unit of Equipment free from all claims or Liens (except as permitted by clauses (i), (ii) and (iii) of Section 6.05(c), the rights of the Company under this Agreement and any lease permitted by Section 4.09);

(e) an Opinion of Counsel to the effect that (i) this Agreement has been duly authorized, executed and delivered by the Company, and constitutes the legal, valid and binding obligation of the Company, enforceable against the Company in accordance with its terms (subject, as to the enforcement of remedies, to any applicable bankruptcy, reorganization, insolvency, moratorium and other similar laws affecting the enforcement of creditors' rights generally from time to time in effect and subject to laws and equitable principles limiting the availability of the remedy of specific performance and other equitable remedies), (ii) the Trustee is vested with all the right, title and interest of the Company in and to all leases then in effect and covering the Trust Equipment delivered on or prior to the date of such opinion but only to the extent such right, title and interest relate to units of Trust Equipment, (iii) this Agreement, each lease referred to in (ii) and each Lease Assignment relating to such lease has been duly filed with the Interstate Commerce Commission in accordance with 49 U.S.C. § 11303, (iv) Uniform Commercial Code Financing Statements relating to the

assignments of the rights of the Company under a maintenance contract listed on Schedule B to this Agreement have been duly filed and recorded with the Secretary of State of the State of California, and (v) no further filing, recordation or deposit is necessary (or will be necessary in the future, except as stated in such opinion) for the establishment and preservation of the rights of the Trustee in and to such unit of Equipment or any such lease or maintenance contract in any state of the United States of America or the District of Columbia;

(f) in the case of any such unit of Trust Equipment which is leased by the Company under a lease which presently or may in the future relate both to Trust Equipment and to railroad equipment which is not Trust Equipment, an acknowledgment from the lessee party to the lease under which such unit of Trust Equipment is leased by the Company acknowledging that the Company has sold (or caused to be sold) such unit of Trust Equipment to the Trustee and consenting and acknowledging that the right, title and interest of the Company under such lease relating to such unit of Trust Equipment have been assigned to the Trustee and confirming that any assignment of any of the right, title and interest of the Company under such lease, to the extent that they relate to railroad equipment which is not Trust Equipment, shall not impair or offset the obligation to pay to the Trustee all rentals under such lease in respect of such unit of Trust Equipment as provided in Section 4.09 hereof and a consent of such lessee to the effect that the right, title and interest of the Company under such lease, to the extent they relate to railroad equipment which is not Trust Equipment, may either be retained by the Company or assigned to others;

(g) unless such unit of Equipment shall have been described by register number in Schedule A, as theretofore supplemented or amended, an amendment or supplement to Schedule A which describes such unit of Equipment by number; and

(h) the original of the Lease under which such unit of Equipment has been or is to be leased by the Company and a Lease Assignment with respect to such lease, together with a supplement or schedule thereto specifically describing such unit of Equipment by register number if such lease does not so describe it, unless such lease and such supplement or schedule, if any, shall previously have been delivered to the Trustee.

SECTION 3.04. Prepayments from Deposited Cash.

In the event that all of the Equipment described in Schedule A hereto shall have been accepted by the Trustee pursuant to Sections 3.01 and 3.03(a), payment shall have been made therefor pursuant to Section 3.02 and there shall remain on deposit with the Trustee a portion of the proceeds of the sale of the Trust Certificates, the Trustee, upon Request, shall apply on March 1, 1980, all or any part of such remaining proceeds not exceeding the amount permitted then to be prepaid by Section 2.03(a)(2) to the prepayment of the installments of principal of the Trust Certificates pursuant to Section 2.03(a)(2) and as provided in Section 2.03(d), such prepayment to be made pro rata on each outstanding Trust Certificate.

ARTICLE FOUR

LEASE OF TRUST EQUIPMENT TO THE COMPANY

SECTION 4.01. Lease of Trust Equipment. The Trustee does hereby let and lease to the Company all the Trust Equipment for a period ending December 1, 1994.

SECTION 4.02. Equipment Automatically Subjected. As and when any Equipment shall from time to time be accepted hereunder by the Trustee, the same shall, ipso facto and without further instrument of lease or transfer, become subject to all the terms and provisions hereof.

SECTION 4.03. Additional and Substituted Equipment Subjected Hereto. In the event that the Company shall, as provided in Section 3.01 or 4.06, sell or transfer to the Trustee other Equipment in addition to or in substitution for any of the Equipment herein specifically described or subjected hereto, such other Equipment shall be included as part of the Trust Equipment by supplement hereto to be executed by the Trustee and the Company and to be filed with the Interstate Commerce Commission in accordance with all applicable requirements. Such Equipment shall be subject to all the terms and conditions hereof in all respects as though it had originally been part of the Equipment herein specifically described.

SECTION 4.04. Rental Payments. The Company hereby accepts the lease of all the Trust Equipment; and the Company unconditionally covenants and agrees to pay to the Trustee at

the Corporate Trust Office in the State of New York in immediately available funds (or, in the case of taxes, to the proper taxing authority), in such coin or currency of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts, rental hereunder which shall be sufficient to pay and discharge the following items, when and as the same shall become due and payable (whether or not any of such items shall become due and payable prior to the acceptance of and lease to the Company of any unit of the Trust Equipment):

(1)(a) the expenses of the trust hereby created, including compensation and reimbursement of expenses provided for herein, and (b) an amount equal to any expenses incurred or loss of principal (including interest accrued thereupon at the time of purchase) in connection with any purchase, sale or redemption by the Trustee of Investments;

(2) any and all taxes, assessments and governmental charges upon or on account of the income or property of the trust, or upon or on account of this Agreement, which the Trustee as such may be required to pay (it being understood that taxes on fees earned by the Trustee under this Agreement are not upon or on account of this Agreement);

(3)(a) the amounts of interest payable on the Trust Certificates, when and as the same shall become payable, and (b) interest at the rate of 12% per annum from the due date upon the amount of any installments of rental payable under this and the following subparagraph which shall not be paid when due, to the extent legally enforceable; and

(4) the installments of principal of all the Trust Certificates each aggregating an amount obtained by subtracting the interest due thereon on such date from 3.422% of the original principal amount thereof quarterly (the final installment being in any event in an amount equal to the remaining principal amount owing on the Trust Certificates), except to the extent that prepayments are applied to the installments as provided in Section 2.03(d), when and as the same shall become payable, whether upon the date of maturity thereof or by declaration or otherwise.

Nothing contained herein or in the Trust Certificates shall be deemed to impose on the Trustee or on the

Company, except as provided in Section 4.04(2), any obligation to pay to the registered holder of any Trust Certificate any tax, assessment or governmental charge required by any present or future law of the United States of America, or of any state, county, municipality or other taxing authority thereof, to be paid in behalf of, or withheld from the amount payable to, the holder of any Trust Certificate.

The Company shall not be required to pay any tax, assessment or governmental charge so long as it shall in good faith and by appropriate legal proceedings contest the validity thereof, provided that the Trustee shall have received an Opinion of Counsel to the effect that the rights or interests of the Trustee or of the holders of the Trust Certificates will not be materially endangered thereby.

SECTION 4.05. Termination of Trust and Lease.

After all payments due or to become due from the Company hereunder shall have been completed and fully made to and received by the Trustee or the appropriate taxing authority (1) such payments shall be deemed to represent payment of the full purchase price for the Company's purchase at such time of the Trust Equipment from the Trustee, (2) any moneys remaining in the hands of the Trustee after providing for all outstanding Trust Certificates and after paying the expenses of the Trustee, including its reasonable compensation, shall be paid to the Company, (3) title to all the Trust Equipment shall vest in the Company and (4) the Trustee shall execute for recording in public offices, at the expense of the Company, such instrument or instruments in writing as reasonably shall be requested by the Company in order to make clear upon public records the Company's title to all the Trust Equipment under the laws of any jurisdiction; provided, however, that until that time title to the Trust Equipment shall not pass to or vest in the Company, but title to and ownership of all the Trust Equipment shall be and remain in the Trustee, notwithstanding the delivery of the Trust Equipment to and the possession and use thereof by the Company pursuant to the terms of this Agreement.

SECTION 4.06. Substitution and Replacement of Trust Equipment. Upon Request, the Trustee shall, at any time and from time to time, execute and deliver a bill of sale assigning and transferring to the transferee named by the Company all the right, title and interest of the Trustee in and to any or all of the units of Trust Equipment; provided, however, that prior to executing any such bill of sale (a) there shall be paid to the Trustee cash in an amount not less than the value of the units of Trust Equipment to be assigned or transferred by the Trustee, or (b) there shall be conveyed to the Trustee at the time of assignment or transfer



of any units of Trust Equipment, other units of Equipment first put into service on or after June 1, 1979, and of a value not less than the value of the units of Trust Equipment to be assigned or transferred, and having an estimated useful life beyond December 1, 1994.

At the time of delivery of any Request pursuant to the first paragraph of this Section, the Company shall, if other Equipment is to be conveyed to the Trustee in substitution for the Trust Equipment to be assigned or transferred by the Trustee, deliver to the Trustee the following papers:

(1) an Officer's Certificate certifying (i) the value, as of the date of such Request, of the Trust Equipment so to be assigned or transferred by the Trustee and the date such Trust Equipment was first put into service (or that such Trust Equipment was first put into service not later than a specified date), (ii) the value, as of the date of such Request, of such substituted Equipment and the date such substituted Equipment was first put into service (or that such substituted Equipment was first put into service not earlier than a specified date), (iii) that each such unit so to be substituted is Equipment as herein defined and is marked in accordance with the provisions of Section 4.07 hereof, (iv) that each unit to be so substituted has an estimated useful life beyond December 1, 1994, and (v) that no Event of Default or Default hereunder has occurred and is continuing;

(2) a bill or bills of sale and an invoice or invoices from the Owner in respect of such substituted Equipment as provided for in Sections 3.03(a) and (c) (acceptance of such bill or bills of sale by the Trustee to constitute acceptance by the Trustee hereunder of such Equipment);

(3) an Opinion of Counsel to the effect that (i) such bill or bills of sale are valid and effective, either alone or together with any other instruments referred to in and accompanying such opinion, to vest in the Trustee title to such substituted Equipment free from all claims or Liens (except as permitted by clauses (i), (ii) and (iii) of Section 6.05(c), the rights of the Company hereunder and any lease permitted by Section 4.09), (ii) a proper supplement hereto in respect of each substituted unit of Equipment has been duly authorized, executed and delivered by the parties thereto and has been filed with the Interstate Commerce Commission in accordance with 49 U.S.C. § 11303, (iii) the lease

and the Lease Assignment relating to such unit of Equipment has been recorded with the Interstate Commerce Commission in accordance with 49 U.S.C. § 11303, and (iv) no further filing, recordation or deposit is necessary, or will be necessary in the future, except as stated in such opinion, for the establishment and preservation of the rights of the Trustee in and to such unit of Equipment in any state of the United States of America or the District of Columbia;

(4) in the case of any such unit of Trust Equipment which is leased by the Company under a lease which presently or may in the future relate both to Trust Equipment and to railroad equipment which is not Trust Equipment, an acknowledgment from the lessee party to the lease under which such unit of Trust Equipment is leased by the Company acknowledging that the Company has sold (or caused to be sold) such unit of Trust Equipment to the Trustee and consenting and acknowledging that the right, title and interest of the Company under such lease relating to such unit of Trust Equipment have been assigned to the Trustee and confirming that any assignment of any of the right, title and interest of the Company under such lease, to the extent that they relate to railroad equipment which is not Trust Equipment, shall not impair or offset the obligation to pay to the Trustee all rentals under such lease in respect of such unit of Trust Equipment as provided in Section 4.09 hereof and a consent of such lessee to the effect that the right, title and interest of the Company under such lease to the extent they relate to railroad equipment which is not Trust Equipment, may either be retained by the Company or assigned to others;

(5) an amendment or supplement to Schedule A which describes such unit of Equipment by number; and

(6) the original of the Lease under which such unit of Equipment has been or is to be leased by the Company and a Lease Assignment with respect to such lease, together with a supplement or schedule thereto specifically describing such unit of Equipment by register number if such lease does not so describe it, unless such lease and such supplement or schedule, if any, shall previously have been delivered to the Trustee.

At the time of delivery of any Request pursuant to the first paragraph of this Section, the Company shall, if cash is to be paid to the Trustee in respect of the Trust Equipment to be assigned or transferred by the Trustee,

deliver to the Trustee an Officer's Certificate to the effect set forth in clauses (i) and (v) of subparagraph (1) of the next preceding paragraph.

Cash deposited pursuant to this Section or Section 4.08 may, from time to time, so long as no Event of Default shall have occurred and be continuing, be paid over by the Trustee to the Company upon Request, and subject to the receipt of a Written Direction approving the same, against conveyance to the Trustee of units of Equipment (hereinafter in this paragraph called the "Replacing Equipment") described in such Request first put into service on or after June 1, 1979, having a value, as of the date of said Request, not less than the amount of cash so paid and having an estimated useful life beyond December 1, 1994, and upon delivery to the Trustee of papers corresponding to those set forth in the second paragraph of this Section, with such appropriate modifications as may be approved by the Trustee; provided, however, that receipt of such a Written Direction shall not be required with respect to the payment over by the Trustee to the Company of cash deposited pursuant to Section 4.08 if (1) the Replacing Equipment is of the same type as any Equipment listed on Schedule A, as supplemented, hereto and is in as good condition as such Equipment was immediately prior to such casualty occurrence, (2) the Replacing Equipment has been leased by the Company to any lessee listed on Schedule A hereto (or a different lessee pursuant to a Lease), and (3) the Company shall have furnished to the Trustee and the Original Purchaser an Officer's Certificate to the foregoing effects. If a Written Direction is so required and is not received within 30 days after a written request therefor by the Company to the Original Purchaser, the Company may, by Request, direct the Trustee to apply (and the Trustee shall so apply) such cash to the prepayment, on the March 1, June 1, September 1 or December 1 next succeeding such Request by at least 30 days, of the installments of principal of the Trust Certificates as provided in Section 2.03(d) hereof, such prepayment to be made pro rata on each outstanding Trust Certificate.

For all purposes of this Section, (i) the value of any unit of Trust Equipment assigned or transferred by the Trustee as provided in this Section shall be deemed to be the amount obtained by multiplying the aggregate unpaid principal amount of Trust Certificates on the date of such transfer by a fraction the numerator of which is the Cost of such unit and the denominator of which is the Cost of all units of Trust Equipment and (ii) the value of any unit of Equipment conveyed to the Trustee as provided in this Section shall be the actual fair value thereof.

**SECTION 4.07. Marking of Trust Equipment.** The Company agrees that it will cause each unit of Trust Equipment to be kept numbered with such identifying numbers as shall be set forth in Schedule A hereto or a supplement thereof and it will immediately at its own cost and expense prepare and deliver to its lessees the appropriate form of stencil for marking purposes and will forthwith exercise its rights and powers under any leases to direct such lessees thereunder to mark plainly, distinctly, permanently and conspicuously on each side of each unit of the Trust Equipment, in letters not less than one inch in height the following legend:

"OWNERSHIP SUBJECT TO A SECURITY AGREEMENT FILED WITH THE INTERSTATE COMMERCE COMMISSION."

Such marks shall be such as to be readily visible. The Company will also promptly so mark each unit of the Trust Equipment not subject to a lease.

In case, prior to the termination of the lease provided for in this Article Four, any such marks shall at any time be removed, defaced or destroyed, the Company shall cause the same to be restored or replaced. The Company shall not change, or permit to be changed, the numbers of any of the Trust Equipment at any time covered hereby (or any numbers which may have been substituted as herein provided) except in accordance with a statement of new numbers to be substituted therefor which previously shall have been filed with the Trustee and which shall be filed by the Company in like manner as this Agreement.

The Trust Equipment may be lettered in an appropriate manner for convenience of identification of the leasehold interest of the Company therein (i.e., the Trust Equipment may be lettered "Leased from BRAE"), and may also be lettered, in case of any leases permitted by Section 4.09, in such manner as may be appropriate for convenience of identification of such leasehold interest therein; but the Company, during the continuance of the lease provided for herein, will not allow any lettering or designation to be placed on any of the Trust Equipment as a designation which might reasonably be interpreted as a claim of ownership thereof by the Company or by any Person other than the Trustee.

**SECTION 4.08. Maintenance of Trust Equipment; Casualty Occurrences.** The Company agrees that it will maintain or cause to be maintained and keep all the Trust Equipment in good order and proper repair (normal wear and tear excepted) at no cost or expense to the Trustee, unless and until it becomes worn out, unsuitable for use, lost beyond

hope of recovery, destroyed or damaged beyond economical repair, taken or requisitioned (unless any such unit is requisitioned for use and such requisition does not exceed a period of 180 days) by condemnation or otherwise or becomes economically obsolete due to substantial, adverse amendments to presently existing regulations of the Interstate Commerce Commission or it enters the territorial jurisdiction of the Republic of Mexico or the Province of Quebec at any time when Trust Equipment having a value equal to 3% or 5%, respectively, of the value of all the Trust Equipment is situated within said territorial jurisdiction (any of the above such events hereinafter called a "Casualty Occurrence"). It is understood that if Trust Equipment having an aggregate value in excess of 3% or 5% of the value of all the Trust Equipment is situated within the territorial jurisdiction of the Republic of Mexico or the Province of Quebec, respectively, a Casualty Occurrence shall be deemed to have occurred in respect of only such units of Equipment as are sufficient to reduce the value of the units of Trust Equipment remaining in such territorial jurisdiction below said 3% or 5%, as the case may be. For purposes of this paragraph, value shall be determined in the manner provided in clause (i) of the last paragraph of Section 4.06 hereof.

In order to comply with the foregoing, the Company has entered into a maintenance contract relating to the Trust Equipment, listed on Schedule B hereto, with a reputable rail service maintenance company to provide for the maintenance and repair of the Trust Equipment. The Company hereby assigns to the Trustee all right, title and interest of the Company in, to and under such maintenance contract to the extent such contract relates to the Trust Equipment, including (without limitation) all rights, privileges and remedies of the Company thereunder; provided, however, that the Company shall remain liable under such maintenance contract to observe and perform all the conditions and obligations to be observed and performed by it thereunder, and, so long as the Company shall be in possession of the Trust Equipment, the Company shall be entitled to require and enforce the performance of such contract without further consent of or action by the Trustee, all in accordance with and pursuant to the terms and provisions thereof. The Company will not agree to or permit any amendment or other modification or any termination (except such as is permitted by the terms thereof) of such maintenance contract except for amendments and other modifications made in accordance with reasonable commercial standards which do not adversely affect the Trustee's rights thereunder or the ability of either of the parties thereto to perform such contract.

Whenever any unit of the Trust Equipment shall suffer a Casualty Occurrence the Company shall, within 30 days after it shall have been informed of such Casualty Occurrence, deliver to the Trustee and the Original Purchaser (so long as it is a holder of Trust Certificates) an Officer's Certificate describing such Trust Equipment and stating the value to the Company thereof as of the date such Trust Equipment suffered such Casualty Occurrence. Within 30 days after the Company shall have knowledge that the aggregate value of all units of the Trust Equipment having suffered a Casualty Occurrence (exclusive of units having suffered a Casualty Occurrence in respect of which a payment shall have been made to the Trustee pursuant to this Section) shall exceed \$200,000, the Company shall deposit with the Trustee an amount in cash equal to the value of such units. For purposes of this paragraph, value shall be determined in the manner provided in clause (i) of the last paragraph of Section 4.06. The rights and remedies of the Trustee to enforce or to recover any of the rental payments shall not be affected by reason of such Casualty Occurrence. Cash deposited with the Trustee pursuant to this Section shall be held and applied at the election of the Company (as evidenced by a Request) either (i) as provided in the first sentence of the penultimate paragraph of Section 4.06 or (ii) to prepay, on the March 1, June 1, September 1 or December 1 next succeeding such Request by at least 30 days, installments of principal of the Trust Certificates as provided in Section 2.03(d), such prepayment to be made pro rata on each outstanding Trust Certificate.

The Company agrees to furnish to the Trustee, on or before June 1 in each year commencing with 1980, an Officer's Certificate dated as of the preceding March 31, (1) stating the amount, description and numbers of all Trust Equipment that may have suffered a Casualty Occurrence since the date of the last preceding statement (or the date of this Agreement in the case of the first statement), (2) identifying the units of Trust Equipment then being leased by the Company as permitted by Section 4.09 (including the name of the lessee, the term of the lease and the date of the lease pursuant to which such Trust Equipment is leased) and specifying which units of Trust Equipment are not then being leased by the Company and (3) certifying that there is not any Default or Event of Default under any provision of this Agreement or specifying all such Defaults and Events of Default and the action being taken by the Company to remedy the same.

SECTION 4.09. Possession of Trust Equipment; Security Interest in Leases. Except as provided in this Section, the Company will not assign or transfer its rights hereunder, or transfer or lease the Trust Equipment or any part thereof or assign, pledge, transfer or otherwise dispose of any of its rights under any leases permitted hereunder, without the prior written consent of the Trustee; and the Company shall not, without such written consent, except as herein provided, part with the possession of, or suffer or allow to pass out of its possession or control, any of the Trust Equipment.

So long as an Event of Default shall not have occurred and be continuing under this Agreement, the Company shall be entitled to the possession of the Trust Equipment and, subject to the provisions of the last paragraph of this Section 4.09, to maintain, amend, terminate and enter into Leases of the Trust Equipment and to permit its use by (including interchange service), one or more lessees or users in the United States of America (or any state thereof or the District of Columbia) or in the Dominion of Canada or any Province or Territory thereof; provided, however, that the Company shall not enter into any leases or car contracts relating to the use of Trust Equipment with any lessee or user incorporated, or having its principal place of business, in the Dominion of Canada or any Province or Territory thereof (herein called "Canadian Lessees") if the aggregate value of Trust Equipment subject to leases and car contracts with Canadian Lessees would exceed 10% of the aggregate value of all the Trust Equipment; and provided, further, however, that the Company shall not enter into any per diem pass through leases or car contracts relating to the use of Trust Equipment with any lessee or user if the aggregate number of railroad box cars constituting Trust Equipment subject to leases and car contracts with any such lessee or user would exceed 50% of the estimated box car requirements (determined in good faith by the Company by the application of customary standards and measurements at the time the Company placed orders for the manufacture of the box cars which constitute such Trust Equipment) of such lessee or user. Upon entering into any Lease or car contract with a Canadian Lessee, the Company will promptly furnish to the Trustee an Officer's Certificate to the effect set forth in the first proviso of this paragraph which shall also include a statement of the value of Trust Equipment referred to therein. Promptly after entering into any Lease (other than those listed on Schedule A hereto) of Trust Equipment or any amendment to a Lease of Trust Equipment which adds or

substitutes units of Equipment or changes the term of the Lease, the Company will execute and deliver, and cause to be filed with the Interstate Commerce Commission pursuant to Section 6.03, a supplement or amendment hereto which effects appropriate modifications to the information set forth in Schedule A hereto and will also deliver and cause to be filed with the Trustee and with the Interstate Commerce Commission a copy of such Lease or amendment. Any Lease by the Company entered into pursuant to this Section 4.09 may provide (and such provision shall be binding upon the Trustee) that the lessee, so long as it shall not be in default under such Lease, shall be entitled to the possession of the Trust Equipment included in such lease and the use thereof, and, subject to the provisions of Section 4.07, may provide for lettering or marking upon such Trust Equipment for convenience of identification of the leasehold interest of such lessee therein. For the purposes of this paragraph, value shall be determined in the manner provided in clause (i) of the last paragraph of Section 4.06.

As security for the payment and performance of the obligations of the Company hereunder, the Company hereby grants, pledges and assigns unto the Trustee all its right, title and interest in and to any lease (including the leases referred to in Schedule A hereto) of any unit of the Trust Equipment existing as of the date hereof or entered into in the future, but only to the extent such right, title and interest in and to such lease relates to units of Trust Equipment, and all rentals, moneys and proceeds payable to or receivable by the Company under any such lease, and the Company shall execute and deliver a Lease Assignment with respect to such lease; provided, however, that (a) so long as no Event of Default shall have occurred and be continuing the Company shall be entitled to collect and receive all such rentals, moneys and proceeds, and to exercise all other rights of lessor as to the use and operation of the Trust Equipment, and (b) during the continuance of any Event of Default, all such rentals, moneys and proceeds shall be paid to the Trustee and applied to the payment or prepayment of the principal of, and/or to the payment of interest due and owing on, the Trust Certificates, all as may be specified in a Written Direction or, in the absence thereof, as may be determined by the Trustee. It is hereby agreed that the Company will under no circumstance have the right to grant, pledge or assign, other than pursuant to this Section 4.09, any of its right, title and interest in and to any lease (including the leases referred to in Schedule A hereto) relating to any unit of Trust Equipment existing as of the date hereof or entered into in the future or permit any other railroad equipment to be delivered under any such



lease unless the Trustee shall have received an acknowledgment from the lessee party to the lease under which any such unit of Trust Equipment is leased by the Company acknowledging that the Company has sold (or caused to be sold) such unit of Trust Equipment to the Trustee and consenting and acknowledging that the right, title and interest of the Company under such lease relating to all units of Trust Equipment have been assigned to the Trustee and confirming that any assignment of any of the right, title and interest of the Company under such lease, to the extent that they relate to railroad equipment which is not Trust Equipment, shall not impair or offset the obligation to pay to the Trustee all rentals under such lease in respect of any unit of Trust Equipment and a consent of such lessee to the effect that the right, title and interest of the Company under such lease, to the extent they relate to railroad equipment which is not Trust Equipment, may either be retained by the Company or assigned to others.

Notwithstanding anything to the contrary contained herein, the Company will not amend, terminate or replace any lease covering any of the Trust Equipment without the prior written consent of the Holders of 66-2/3% in principal amount of the outstanding Trust Certificates if such amendment, termination, or replacement would impair the security provided hereunder by the assignment to the Trustee of the leases in respect to the Trust Equipment hereunder. Any amendment of a lease which does not reduce the term or the projected amount of rentals payable thereunder below the amount permitted for a Lease shall not be deemed to impair the security provided hereunder. The Company will deliver to the Trustee and the Original Purchaser (so long as it is a holder of Trust Certificates) copies of all leases assigned hereunder and copies of all amendments thereof.

The Company agrees not to enter into any leases or car contracts relating to the use of Trust Equipment with any lessee or user incorporated, or having its principal place of business, or owning fixed railroad assets, in the State of California, except for the 50 boxcars listed on Schedule A hereto as being leased to Railroad Consultants.

**SECTION 4.10. Maintenance of Insurance.** Upon the delivery of any unit of Trust Equipment the Company will promptly effect and maintain or cause to be effected and maintained with financially sound and reputable companies, insurance policies (i) insuring each such unit of Trust Equipment against loss by fire, explosion, theft and such other casualties as are usually insured against by companies

engaged in the same or a similar business and with coverage in an amount at least equal to the value of each such unit of Trust Equipment (but such coverage for all railroad rolling stock owned or leased by the Company may be limited to \$5,000,000 for each occurrence and the policies relating thereto may contain provisions relating to deductibles which are comparable to those contained in policies carried by other companies engaged in the same or a similar business), (ii) insuring the Company and the Trustee against liability for personal injury and property damage caused by or relating to such railroad rolling stock or their use with coverage in the amount of at least \$5,000,000, and (iii) insuring the Company for the loss of revenues from any unit of railroad rolling stock which becomes inoperable due to damage, for an 80-day period commencing 10 days after the date of such damage, all such insurance policies to be in such form and to have such coverage as shall be satisfactory to the Trustee, with losses payable to the Company and the Trustee as their respective interests may appear.

SECTION 4.11. Indemnity. The Company covenants and agrees to indemnify the Trustee against any and all claims or loss arising out of or connected with the ownership, lease or use of any of the Trust Equipment and particularly against any and all claims or loss arising out of the use of any patented inventions in and about the Trust Equipment, and to comply in all respects with the laws of the United States of America, and of all the states and other jurisdictions in which the Trust Equipment, or any unit thereof, may be operated, and with all lawful acts, rules, regulations and orders of any commissions, boards and other legislative, executive, administrative or judicial bodies or officers having power to regulate or supervise any of the Trust Equipment, including without limitation all lawful acts, rules, regulations and orders of any body having competent jurisdiction relating to automatic coupler devices or attachments, air brakes or other appliances; provided, however, that the Company may in good faith contest the validity of any such law, act, rule, regulation or order, or the application thereof to the Trust Equipment or any part thereof, in any reasonable manner which will not in the judgment of the Trustee materially endanger the rights or interests of the Trustee or of the Holders of the Trust Certificates. The Company shall not be relieved from any of its obligations hereunder by reason of the assertion or enforcement of any such claims or the commencement or prosecution of any litigation in respect thereof.

## ARTICLE FIVE

## EVENTS OF DEFAULT AND REMEDIES

Section 5.01. Events of Default. The Company covenants and agrees that in case:

(a) the Company shall default in the payment of any part of the rental payable pursuant to subparagraph (4) of the first paragraph of Section 4.04 when the same shall be due and payable; or

(b) the Company shall default in the payment of any part of the rental payable pursuant to subparagraphs (1), (2) or (3) of the first paragraph of Section 4.04 for more than ten days after the same shall have become due and payable; or

(c) the Company shall enter into any lease, amendment of a lease or car contract prohibited by Section 4.09 or make or suffer any unauthorized assignment or transfer of its rights hereunder or shall make any unauthorized transfer or lease (including, for the purpose of this clause, contracts for the use thereof) of any of the Trust Equipment, or, except as herein authorized, shall part with the possession of any of the Trust Equipment, and shall fail or refuse either to cause such assignment, amendment, transfer or lease to be canceled by agreement of all parties having any interest therein and recover possession of such Trust Equipment within 30 days after the Trustee shall have demanded in writing such cancelation and recovery of possession, or within said 30 days to deposit with the Trustee a sum in cash equal to the value, as of the date of such unauthorized action (determined in the manner provided in clause (i) of the last paragraph of Section 4.06), of such Trust Equipment (any sum so deposited to be returned to the Company upon the cancelation of such assignment, transfer, amendment or lease and the recovery of possession by the Company of such Trust Equipment); or

(d) the Company shall default in the performance or observance of any agreement contained in Section 6.05 hereof; or

(e) the Company shall, for more than 30 days after the Trustee shall have demanded in writing performance

thereof, fail or refuse to comply with any other of the terms and covenants hereof on its part to be kept and performed, or to make provision satisfactory to the Trustee for such compliance; or

(f) the lease provided for in Section 4.01 hereof shall be terminated by operation of law; or

(g) any proceedings shall be commenced by or against the Company or any Restricted Subsidiary under Title 11 of the United States Code, as now constituted or as may hereafter be amended, or any other Federal or state law relating to bankruptcy or insolvency, or laws relating to the relief of debtors, readjustments of indebtedness, reorganizations, arrangements, compositions or extensions, or appointing a receiver or decreeing or ordering the winding up or liquidation of the affairs of the Company or any Restricted Subsidiary, or similar proceedings for any relief which includes or might result in, any material modification of the obligations of the Company hereunder, under the guarantee endorsed on the Trust Certificates or under any instrument made in connection with the purchase of the Trust Certificates by the Original Purchaser (unless such proceedings shall have been discharged, dismissed, stayed or otherwise rendered ineffective within 60 days from the date of the filing thereof [but then only so long as such stay shall continue in force or such ineffectiveness shall continue]) and all the obligations of the Company hereunder, under the guarantee endorsed on the Trust Certificates and under any instrument made in connection with the purchase of the Trust Certificates by the Original Purchaser, as the case may be, shall not have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees or receiver or receivers appointed for the Company or for its property in connection with such proceedings in such manner that such obligations shall have the same status as obligations incurred by such trustee or trustees or receiver or receivers, within 30 days after such appointment, if any, or 60 days after such proceedings shall have been commenced, whichever shall be earlier; or

(h) the Company or any Restricted Subsidiary shall institute proceedings to be adjudicated a bankrupt or insolvent or shall consent to the institution of bankruptcy or insolvency proceedings against it or shall

file a petition or answer or consent seeking reorganization or relief under Title 11 of the United States Code, as now constituted or as may hereafter be amended, or any other Federal or state law relating to bankruptcy or insolvency or shall consent to the filing of any such petition or shall consent to the appointment of a receiver or shall make an assignment for the benefit of creditors or shall admit in writing its inability to pay its debts generally as they become due, or action shall be taken by the Company or any Restricted Subsidiary in furtherance of any of the aforesaid purposes; or

(i) material default shall be made by the Company in the performance or observance of any of the covenants, agreements or conditions on its part in the Purchase Agreement dated as of June 1, 1979, between the Company and the Original Purchaser; or any representation or warranty heretofore or hereafter made by or on behalf of the Company herein or in said Purchase Agreement or in any other certificate or other writing delivered under or pursuant to this Agreement or said Purchase Agreement or in connection with any provision hereof or thereof or related to the transaction contemplated hereby or thereby shall prove to have been false or incorrect or breached in any material respect on the date as of which made, and such default or breach shall continue for a period of 30 days after written notice to the Company by the Trustee or to the Company and the Trustee by the Original Purchaser, if it is a Holder of Trust Certificates, or any institutional investor which is a Holder of 3% or more in aggregate principal amount of the Trust Certificates then outstanding; or

(j) the Company or any Restricted Subsidiary defaults in any payment of principal of or interest on any other obligation for money borrowed or any other obligation constituting Debt of the Company or such Restricted Subsidiary (or any obligation under conditional sale or other title retention agreements or any obligation issued or assumed as full or partial payment for property whether or not secured by purchase money mortgage or any obligation under notes payable or drafts accepted representing extensions of credit) beyond any period of grace provided with respect thereto, or defaults in the performance of any other agreement, term or condition contained in any agreement under which any such obligation is created (or if any other default under any such agreement shall occur and be continuing)

if the effect of such default is to cause, or to permit the holder or holders of such obligation (or a trustee on behalf of such holder or holders) to cause, such obligation to become due prior to its stated maturity or scheduled date for payment and the aggregate principal amount which could so become due exceeds \$100,000; or

(k) the Company or any Restricted Subsidiary is subject to any final judgment for the payment of money which is not discharged in full or stayed within 30 days of such judgment's entry;

then, in any such case (in this Agreement sometimes called an "Event of Default"), if such Event of Default shall be continuing, the Trustee upon the written request of the Holders of 40% in unpaid principal amount of the then outstanding Trust Certificates shall, by notice in writing delivered to the Company, declare to be due and payable forthwith the entire amount of the rentals (but not including rentals required for the payment of interest accruing after the date of such declaration) payable by the Company as set forth in Section 4.04 and not theretofore paid. Thereupon the entire amount of such rentals shall forthwith become, and shall be, due and payable immediately without further demand, together with interest at the rate of 12% per annum, to the extent legally enforceable, on any portion thereof overdue.

In case one or more Events of Default shall happen and be continuing, the Trustee upon the written request of the Holders of not less than 40% in unpaid principal amount of the then outstanding Trust Certificates shall, by notice in writing delivered to the Company, declare the unpaid principal of all the Trust Certificates then outstanding to be due and payable, and thereupon the same shall become and be immediately due and payable; provided, however, that if a subsidiary (the "Weyerhaeuser subsidiary") of Weyerhaeuser Company, a Washington corporation ("Weyerhaeuser"), is a lessee of Trust Equipment and, within 30 days after written notice of an Event of Default is given to Weyerhaeuser, Weyerhaeuser (A) expressly assumes in writing the due and punctual payment of the Weyerhaeuser Proportion (as defined below) of the principal of and premium, if any, and interest on each Trust Certificate and the due and punctual performance and observance of all the obligations, liabilities and covenants of the Company contained in this Agreement (other than in Sections 6.05(a) through (m) hereof and, in the case of Section 4.04 hereof, limited to the Weyerhaeuser Proportion of rental payments required under Section 4.04) and in the Weyerhaeuser Proportion of each Trust Certificate, in each case as it relates to the Trust Equipment leased to the

Weyerhaeuser subsidiary, (B) pays to the Trustee a sum sufficient to pay all matured installments of interest upon the Weyerhaeuser Proportion of each Trust Certificate and the principal of the Weyerhaeuser Proportion of each Trust Certificate which shall have become due otherwise than by acceleration and any and all other amounts then due and payable under this Agreement (other than the principal of the Weyerhaeuser Proportion of each Trust Certificate which shall have become due by acceleration), (C) expressly acknowledges in writing that the Trust Equipment leased to the Weyerhaeuser subsidiary is subject to the lien and security interest created by this Agreement, (D) records and files, at its sole expense, with the Interstate Commerce Commission pursuant to 49 U.S.C. § 11303, and in such other public offices as the Trustee may reasonably request, an assumption agreement and such other documents as the Holders shall request in order to maintain and preserve the lien and security interest created by this Agreement in the Trust Equipment, (E) agrees to maintain its corporate existence in a manner satisfactory to the Holders of Trust Certificates and (F) furnishes to the Holders documents and opinions of counsel corresponding to those referred to in Paragraphs 6(b), (d), (h) and (i) of the Purchase Agreement, modified to the extent necessary to be applicable to such assumption and satisfactory in form and substance to the Holders, then the Holders shall waive all Events of Default, and rescind and annul such declaration and its consequences, only to the extent such event or declaration relates to the Trust Equipment being leased to the Weyerhaeuser subsidiary; but no such waiver or rescission and amendment shall extend to or shall affect any subsequent default by Weyerhaeuser or the Weyerhaeuser subsidiary or shall impair any right consequent thereon. For purposes of this paragraph, the "Weyerhaeuser Proportion" shall mean a fraction, the numerator of which is the value of the units of Trust Equipment leased by the Weyerhaeuser subsidiary (such value to be determined in accordance with clause (i) of the last paragraph of Section 4.06 hereof) and the denominator of which is the value of all units of Trust Equipment. If any Trust Equipment is leased to a Weyerhaeuser subsidiary, then the Trustee shall give prompt written notice to Weyerhaeuser at the address supplied to the Trustee for that purpose of each Event of Default under this Agreement.

In case the Company shall fail to pay any installment of rental payable pursuant to Section 4.04(3) or (4) when and as the same shall have become due and payable hereunder, and such default shall have continued for a period of ten days, the Trustee, in its own name and as trustee of an express trust, shall be entitled and empowered to institute any action or proceedings at law or in equity for the collec-

tion of the rentals so due and unpaid, and may prosecute any such action or proceedings to judgment or final decree, and may enforce any such judgment or final decree against the Company and collect in the manner provided by law out of the property of the Company wherever situated the moneys adjudged or decreed to be payable.

In case there shall be pending proceedings for the bankruptcy or for the reorganization of the Company under Title 11 of United States Code, as now constituted or as may hereafter be amended, or any other applicable law, or in case a receiver or trustee shall have been appointed for the property of the Company or in case of any other judicial proceedings relative to the Company or to the creditors or property of the Company, the Trustee, irrespective of whether the rental payments hereunder or the unpaid principal amount of the Trust Certificates shall then be due and payable as herein or therein expressed whether by declaration or otherwise and irrespective of whether the Trustee shall have made any demand or declaration pursuant to the provisions of this Section, shall be entitled and empowered, by intervention in such proceedings or otherwise, to file and prove a claim or claims for the entire amount of the rentals (but not including rentals required for the payment of interest accruing after the date of payment of all amounts due), and to file such other papers or documents as may be necessary or advisable in order to have the claims of the Trustee (including any claim for reasonable compensation to the Trustee, its agents, attorneys and counsel, and for reimbursement of all expenses and liabilities incurred, and all advances made, by the Trustee except as a result of its negligence or wilful misconduct) and of the Holders of the Trust Certificates allowed in such proceedings and to collect and receive any moneys or other property payable or deliverable on any such claims, and to distribute all amounts received with respect to the claims of the Holders of the Trust Certificates and of the Trustee on their behalf; and any receiver, assignee or trustee in bankruptcy or reorganization is hereby authorized by each of the Holders of the Trust Certificates to make payments to the Trustee, and, in the event that the Trustee shall consent to the making of payments directly to the Holders of the Trust Certificates, to pay to the Trustee such amount as shall be sufficient to cover reasonable compensation to the Trustee, its agents, attorneys and counsel, and all other expenses and liabilities incurred, and all advances made, by the Trustee except as a result of its negligence or wilful misconduct.

All rights of action and to assert claims under this Agreement, or under any of the Trust Certificates, may



be enforced by the Trustee without the possession of any of the Trust Certificates or the production thereof on any trial or other proceedings relative thereto, and any such action or proceedings instituted by the Trustee shall be brought in its own name as trustee of an express trust, and any recovery of judgment shall be for the ratable benefit of the Holders of the Trust Certificates. In any proceedings brought by the Trustee (and also any proceedings involving the interpretation of any provisions of this Agreement to which the Trustee shall be a party) the Trustee shall be held to represent all the Holders of the Trust Certificates, and it shall not be necessary to make any Holders of the Trust Certificates parties to such proceedings.

SECTION 5.02. Remedies. In case of the happening of any Event of Default, the Trustee may by its agents enter upon the premises of the Company and any Affiliate of the Company or of any lessee (or other person having acquired the use of the Trust Equipment) where any of the Trust Equipment may be and take possession of all or any part of the Trust Equipment and withdraw the same from said premises, retaining all payments which up to that time may have been made on account of rental for the Trust Equipment and otherwise, and shall be entitled to collect, receive and retain all unpaid mileage or other charges of any kind earned by the Trust Equipment or any part thereof, and may lease or otherwise contract for the use of the Trust Equipment or any part thereof; or the Trustee may with or without retaking possession (but only after declaring due and payable the entire amount of rentals payable by the Company and the unpaid principal of all the then outstanding Trust Certificates, as provided in Section 5.01) sell the Trust Equipment or any part thereof, free from any and all claims of the Company at law or in equity, in one lot and as an entirety or in separate lots, at public or private sale, for cash or upon credit, in its discretion, and may proceed otherwise to enforce its rights and the rights of the Holders of then outstanding Trust Certificates, all subject to any mandatory requirements of law applicable thereto. Upon any such sale, the Trustee itself may bid for the property offered for sale or any part thereof. Any such sale may be held or conducted at such place and at such time as the Trustee may specify, or as may be required by law, and without gathering at the place of sale the Trust Equipment to be sold, and in general in such manner as the Trustee may determine, but so that the Company may and shall have a reasonable opportunity to bid at any such sale. After the Trustee has fully exercised its remedies hereunder, the Company shall cease to have any rights or remedies in respect of the Trust Equipment hereunder, but all such rights and remedies shall be deemed thenceforth to have

been waived and surrendered by the Company, and no payments theretofore made by the Company for the rent or use of the Trust Equipment or any of it shall give to the Company any legal or equitable interest or title in or to the Trust Equipment or any of it or any cause or right of action at law or in equity in respect of the Trust Equipment against the Trustee or the holders of interests hereunder. No such taking of possession, withdrawal, lease or sale of the Trust Equipment by the Trustee shall be a bar to the recovery by the Trustee from the Company of rentals then or thereafter due and payable, or of principal and interest in respect of the Trust Certificates, and the Company shall be and remain liable for the same until such sums have been realized as, with the proceeds of the lease or sale of the Trust Equipment, shall be sufficient for the discharge and payment in full of all the obligations of the Company under this Agreement.

SECTION 5.03. Application of Proceeds. If the Trustee shall exercise any of the powers conferred upon it by Sections 5.01 and 5.02, all payments made by the Company to the Trustee, and the proceeds of any judgment collected from the Company by the Trustee, and the proceeds of every sale or lease by the Trustee of any of the Trust Equipment, together with any other sums which may then be held by the Trustee under any of the provisions hereof (other than sums held in trust for the payment of specific Trust Certificates or a part thereof, or interest thereon) shall be applied by the Trustee to the payment, in the following order of priority, (a) of all proper charges, expenses or advances made or incurred by the Trustee in accordance with the provisions of this Agreement and (b) of the principal of all the outstanding Trust Certificates, and/or of interest then due on the Trust Certificates, in each case with interest on the Trust Certificates and on such overdue interest at the rate of 12% per annum, to the extent legally enforceable, from the last preceding interest payment date, whether such Trust Certificates shall have then matured by their terms or not, all as may be specified in a Written Direction or, in the absence thereof, as may be determined by the Trustee.

After all such payments in full shall have been made, the title to any of the Trust Equipment remaining unsold shall be conveyed by the Trustee to the Company free from any further liabilities or obligations to the Trustee hereunder. If after applying all such sums of money realized by the Trustee as aforesaid there shall remain any amount due to the Trustee under the provisions hereof, the Company agrees to pay the amount of such deficit to the Trustee. If after applying as aforesaid the sums of money realized by the Trustee there shall remain

a surplus in the possession of the Trustee, such surplus shall be paid to the Company.

SECTION 5.04. Waivers of Default. Prior to the declaration of the acceleration of the maturity of the rentals and of the maturity of all the Trust Certificates as provided in Section 5.01, the Holders of not less than 66-2/3% in aggregate unpaid principal amount of the Trust Certificates at the time outstanding may on behalf of the Holders of all the Trust Certificates waive by an instrument in writing delivered to the Trustee any past default and its consequences, except a default in the payment of any installment of rental payable pursuant to Section 4.04(3) or (4), but no such waiver shall extend to or affect any subsequent default or impair any right consequent thereon.

If at any time after the principal of all the Trust Certificates shall have been declared and become due and payable or if at any time after the entire amount of rentals shall have been declared and become due and payable, all as provided in Section 5.01, but before December 1, 1994, all arrears of rent (with interest at the rate of 12% per annum upon any overdue installments, to the extent legally enforceable), the expenses and reasonable compensation of the Trustee, together with all expenses of the trust occasioned by the Company's default, and all other sums which shall have become due and payable by the Company hereunder shall be paid by the Company before any sale or lease by the Trustee of any of the Trust Equipment, and every other default shall be made good or cured to the satisfaction of the Trustee, or provision deemed by the Trustee to be adequate shall be made therefor, then, and in every such case, the Trustee, if so requested by the Holders of not less than 66-2/3% in unpaid principal amount of the Trust Certificates then outstanding, shall by written notice to the Company waive the default by reason of which there shall have been such declaration or declarations and the consequences of such default, but no such waiver shall extend to or affect any subsequent default or impair any right consequent thereon.

SECTION 5.05. Obligations of the Company Not Affected by Remedies. No retaking of possession of the Trust Equipment by the Trustee, nor any withdrawal, lease or sale thereof, nor any action or failure or omission to act against the Company or in respect of the Trust Equipment, on the part of the Trustee or on the part of the Holder of any Trust Certificate, nor any delay or indulgence granted to the Company by the Trustee or by any such Holder, shall affect

the obligations of the Company hereunder or the obligations of the Company under the guarantee endorsed on the Trust Certificates.

The Company hereby waives presentation and demand in respect of any of the Trust Certificates and waives notice of presentation, of demand and of any default in the payment of the principal of and interest on the Trust Certificates.

SECTION 5.06. The Company To Deliver Trust Equipment to Trustee. In case the Trustee shall demand possession of any of the Equipment pursuant to Section 5.02 and shall designate a reasonable point or points for the delivery of the Trust Equipment to the Trustee, the Company shall, at its own expense and risk:

(a) forthwith and in the usual manner use its best efforts to cause the Trust Equipment to be placed upon such storage tracks of the Company or any of its Affiliates, if the Company or any Affiliate shall then own any storage tracks, as the Trustee reasonably may designate; and

(b) permit the Trustee to store the Trust Equipment on such tracks at the risk of the Company without charge for insurance, rent or storage until the Trust Equipment has been sold, leased or otherwise disposed of by the Trustee.

During any storage period, the Company will, at its own cost and expense, maintain and keep each such unit of Trust Equipment in good order and repair and will permit the inspection of the Trust Equipment by the Trustee, the Trustee's representatives and prospective purchasers, lessees and users. This agreement to deliver the Trust Equipment and furnish facilities as hereinbefore provided is of the essence of the agreement between the parties, and, upon application to any court of equity having jurisdiction, the Trustee shall be entitled to a decree against the Company requiring specific performance of such agreement. The Company hereby expressly waives any and all claims against the Trustee and its agent or agents for damages of whatever nature in connection with any retaking of any unit of the Trust Equipment in any reasonable manner.

SECTION 5.07. Trustee To Give Notice of Default. The Trustee shall give to the Holders of the Trust Certifi-

cates notice of each Event of Default hereunder actually known to a responsible officer of the Corporate Trust Department of the Trustee within 15 days after such officer so learns of the same.

SECTION 5.08. Control by Holders of Trust Certificates. The Holders of not less than 66-2/3% in aggregate unpaid principal amount of the then outstanding Trust Certificates, by an instrument or instruments in writing executed and delivered to the Trustee, shall have the right to direct the time, method, and place of conducting any proceeding for any remedy available to the Trustee or exercising any trust or power conferred on the Trustee; provided, however, that the Trustee shall have the right to decline to follow any such direction (i) if the Trustee shall be advised by counsel that the action so directed may not lawfully be taken or (ii) if the Trustee shall be advised by counsel that the action so directed may involve it in personal liability unless it shall have received a satisfactory indemnity therefor. The Trustee may take any other action deemed proper by the Trustee which is not inconsistent with any such direction given hereunder.

SECTION 5.09. Unconditional Right of Holders of Trust Certificates To Sue for Principal and Interest. Notwithstanding any other provision in this Agreement, the right (which, it is understood, shall exist) of any Holder of any Trust Certificate to receive payment of the principal of, and interest on, such Trust Certificate, on or after the respective due dates expressed in such Trust Certificate (and after any applicable period of grace provided herein), or to institute suit for the enforcement of any such payment or the guarantee thereof by the Company on or after such respective dates, shall not be impaired or affected without the consent of such Holder, except no such suit shall be instituted if and to the extent that the institution or prosecution thereof or the entry of judgment therein would, under applicable law, result in the surrender, impairment, waiver or loss of the title reserved under this Agreement upon any property subject hereto.

SECTION 5.10. Remedies Cumulative; Subject to Mandatory Requirements of Law. The remedies in this Agreement provided in favor of the Trustee and the Holders of the Trust Certificates, or any of them, shall not be deemed exclusive, but shall be cumulative, and shall be in addition to all other remedies in their favor existing at law or in equity; and such remedies so provided in this Agreement shall

be subject in all respects to any mandatory requirements of law at the time applicable thereto, to the extent such requirements may not be waived on the part of the Company.

SECTION 5.11. Books and Records; Inspection of Property. The Company covenants that it will keep accurate corporate books and financial records, and that so long as any Trust Certificate shall be outstanding, it will permit any Person designated by the Trustee in writing, at the Trustee's expense, to visit and inspect the Trust Equipment (subject to the rights of the lessees thereof), to examine the books of account and records of the Company and its Subsidiaries relating to the Trust Equipment, to make copies thereof and extracts therefrom, to discuss the affairs, finances and accounts of the Company and its Subsidiaries with, and to be advised as to the same by, its and their officers and employees and its and their independent public accountants, all at such reasonable times and as often as the Trustee may reasonably request, it being understood that the Trustee will give reasonable prior notice to the Company of any such visit, inspection, examination, discussion or advice.

## ARTICLE SIX

### ADDITIONAL COVENANTS AND AGREEMENTS BY THE COMPANY

SECTION 6.01. Guarantee of the Company. The Company unconditionally covenants, agrees and guarantees that the Holder of each of the Trust Certificates shall receive the principal amount thereof, and the premium (if any) thereon, in such coin or currency of the United States of America as, at the time of payment, shall be legal tender for the payment of public and private debts, when and as the same shall become due and payable, in accordance with the provisions thereof and of this Agreement (and, if not so paid, with interest thereon until paid at the rate of 12% per annum, to the extent legally enforceable), and shall receive interest thereon in like money at the rate specified therein, at the times and place and otherwise as expressed in the Trust Certificates or this Agreement (and, if not so paid, with interest thereon until paid at the rate of 12% per annum, to the extent legally enforceable); and the Company agrees to endorse upon each of the Trust Certificates, at or before the issuance and delivery thereof by the Trustee, its

guarantee of the prompt payment of the principal thereof and of the interest thereon, in substantially the form hereinbefore set forth. Said guarantee so endorsed shall be signed in the name and on behalf of the Company by the manual or facsimile signature of the President, a Vice President or Treasurer of the Company. In case any officer of the Company whose signature shall appear on said guarantee shall cease to be such officer before the Trust Certificates shall have been issued and delivered by the Trustee, or shall not have been acting in such capacity on the date of the Trust Certificates, such guarantee shall nevertheless be as effective and binding upon the Company as though the person who signed said guarantee had not ceased to be or had then been such officer.

SECTION 6.02. Discharge of Liens. The Company covenants and agrees that it will pay and discharge, or cause to be paid and discharged, or make adequate provision for the satisfaction or discharge of, any debt, tax, charge, assessment, obligation or claim which if unpaid might become a Lien not permitted by Section 6.05(c) upon or against any of the Trust Equipment; but this provision shall not require the payment of any such debt, tax, charge, assessment, obligation or claim so long as the validity thereof shall be contested in good faith and by appropriate legal proceedings, provided that such contest will not materially endanger the rights or interests of the Trustee or of the holders of the Trust Certificates and the Company shall have furnished the Trustee with an Opinion of Counsel to such effect. If the Company does not forthwith pay and discharge, or cause to be paid and discharged, or make adequate provision for the satisfaction or discharge of, any such debt, tax, charge, assessment, obligation or claim as required by this Section, the Trustee may, but shall not be obligated to, pay and discharge the same and any amount so paid shall be secured by and under this Agreement until reimbursed by the Company.

SECTION 6.03. Filing. The Company will, promptly after the execution and delivery of this Agreement, and each supplement or amendment hereto, cause the same to be duly filed with the Interstate Commerce Commission pursuant to 49 U.S.C. § 11303. The Company will, within 30 days after any Trust Equipment shall be acquired by the Trustee pursuant to this Agreement, at the sole cost and expense of the Company, (i) record, register or file this Agreement (or any financing statement or similar notice) in each Province of Canada in which the Company is permitted under applicable law to make such recording, registration or filing in order to perfect and

protect the rights of the Trustee under this Agreement to such Trust Equipment and (ii) deliver to the Trustee an opinion of Canadian counsel to the Company to the effect that all such recordings, registrations and filings have been duly made and no other recording, registration or filing is necessary in order to protect in such Province the rights of the Trustee under this Agreement against any and all subsequent purchasers or mortgagees from or under the Company or from creditors of the Company, or to the effect that no such recording, registration or filing is required. The Company will from time to time do and perform any other act and will execute, acknowledge, deliver, file, register and record and will refile, reregister and rerecord any and all further instruments required by law (including all applicable laws of the Dominion of Canada or any Province thereof and any other jurisdiction) or reasonably requested by the Trustee for the purpose of proper protection of the rights of the Trustee in and to the Trust Equipment and the assignment hereunder, as additional security, of the interests of the Company in and to the Leases of the Trust Equipment listed in Schedule A and in and to the maintenance contract listed in Schedule B, of proper protection of the rights of the holders of the Trust Certificates or of fully carrying out and effectuating this Agreement and the intent thereof, and from time to time shall provide such Opinions of Counsel as reasonably requested by the Trustee with respect to such matters.

Promptly after the execution and delivery of this Agreement and of each ~~material~~ supplement or amendment hereto, the Company will furnish to the Trustee an Opinion of Counsel stating that, in the opinion of such counsel, such document or a financing statement relating to such document has been properly deposited, filed, registered and recorded and re deposited, refiled, reregistered and rerecorded, if necessary, so as effectively to protect the rights of the Trustee in and to the Trust Equipment and the assignment hereunder, as additional security, of the interests of the Company in and to the leases of the Trust Equipment listed in Schedule A hereto, as supplemented, and in and to the maintenance contract listed in Schedule B hereto, as supplemented, and its right and the rights of the holders of the Trust Certificates hereunder and reciting the details of such action.

SECTION 6.04. Further Assurances. The Company covenants and agrees from time to time to do all such acts and execute all such instruments of further assurance as it shall be reasonably requested by the Trustees to do or exe-

(except that an opinion of Canadian counsel shall only be required for material supplements or amendments)

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cute for the purpose of fully carrying out and effectuating this Agreement and the intent hereof.

SECTION 6.05. Negative Covenants. The Company covenants that, without the written consent of the Holders of not less than 66-2/3% in aggregate principal amount of the Trust Certificates at the time outstanding, the Company will not, and will not permit any Restricted Subsidiary to:

(a) Consolidated Shareholders' Equity. Permit Consolidated Shareholders' Equity at any time after the date hereof to be less than \$28,000,000.

(b) Dividend Limitation. Pay or declare any dividend on any class of its stock, or redeem, purchase or otherwise acquire, directly or through any Restricted Subsidiary, any shares of its stock or make or permit any Restricted Subsidiary to make any optional prepayments of principal of, or optionally retire, redeem, purchase or otherwise acquire, directly or through any Restricted Subsidiary, any Subordinated Funded Debt or make or permit any Restricted Subsidiary to make any expenditures permitted by clause (v) of Section 6.05(e) (all of the foregoing being herein called "Restricted Payments") except out of Consolidated Net Earnings Available For Restricted Payments; provided, however, that notwithstanding the foregoing limitations, the Company may pay dividends on its Preferred Stock at the rates provided in the Certificate of Determination of Preferences in respect thereof as in effect on the date hereof, but provided that the amount of any such dividends paid or declared shall be included in any subsequent computation of Consolidated Net Earnings Available For Restricted Payments pursuant to this Section 6.05(b); and provided, further, that, notwithstanding the foregoing limitations, the Company may redeem shares of its capital stock from William J. Texido pursuant to Section 8 of the Employment and Stock Agreement dated as of October 17, 1977, as amended by an Amendment dated as of September 28, 1978, and an Amendment dated as of December 7, 1978, but only from the proceeds of a life insurance policy or policies maintained by the Company on the life of William J. Texido.

"Consolidated Net Earnings" shall mean consolidated gross revenues of the Company and its Restricted Subsid-

iarities (including dividends received in cash from any Subsidiary) less all operating and nonoperating expenses of the Company and its Restricted Subsidiaries including all charges of a proper character (including current and deferred taxes on income, provision for taxes on unremitted foreign earnings which are included in gross revenues, and current additions to reserves), but not including in gross revenue any gains (net of expenses and taxes applicable thereto) in excess of losses resulting from the sale, conversion or other disposition of capital assets (i.e., assets other than current assets), any gains resulting from the write-up of assets, any equity of the Company or any Restricted Subsidiary in the unremitted earnings of any corporation which is not a Restricted Subsidiary, any earnings of any Person acquired by the Company or any Restricted Subsidiary through purchase, merger or consolidation or otherwise for any year prior to the year of acquisition, net earnings of any Restricted Subsidiary allocable to a minority interest in such Subsidiary, the proceeds of any life insurance policies, or any deferred credit representing the excess of equity in any Restricted Subsidiary at the date of acquisition over the cost of the investment in such Restricted Subsidiary, all determined in accordance with Generally Accepted Accounting Principles.

"Consolidated Net Earnings Available For Restricted Payments" shall mean an amount equal to (1) the sum of \$13,000,000 plus 50% (or minus 100% in case of a deficit) of Consolidated Net Earnings for the period (taken as one accounting period) commencing on April 1, 1979, and terminating on the date of any proposed Restricted Payment, less (2) the sum of (a) the aggregate amount of all dividends and other distributions paid or declared by the Company on any class of its stock after March 31, 1979, (b) the aggregate amount of all expenditures made pursuant to clause (v) of Section 6.05(e) after March 31, 1979, and (c) the excess of the aggregate amount expended, directly or indirectly, after March 31, 1979, for the redemption, purchase or other acquisition of any shares of its stock and for the optional payment of principal of, and the optional retirement, redemption, purchase or other acquisition of, Subordinated Funded Debt, over the aggregate amount received as (x) the net cash proceeds of the sale of any shares of its stock after March 31, 1979, and/or (y) the net cash proceeds received after March 31, 1979, upon the sale of any Debt security which has been

converted into shares of its stock, but only if such conversion occurs within five years after the issuance of such Debt security. There shall not be included in Restricted Payments or in any computation of Consolidated Net Earnings Available For Restricted Payments: (x) dividends paid, or distributions made, in stock of the Company; or (y) exchanges of stock of one or more classes of the Company, except to the extent that cash or other value (other than value represented by stock) is involved in such exchange. The term "stock" as used in this Subsection (b) shall include warrants or options to purchase stock.

(c) Liens. Create, assume or suffer to exist any Lien upon any of its property or assets, whether now owned or hereafter acquired (whether or not provision is made for the equal and ratable securing of the Trust Certificates in accordance with the provisions of Section 6.06), except:

(i) the Lien of this Equipment Trust Agreement;

(ii) Liens for taxes not yet due or which are being actively contested in good faith by appropriate proceedings and if appropriate reserves have been established therefor;

(iii) other Liens incidental to the conduct of its business or the ownership of its property and assets which were not incurred in connection with the borrowing of money or the obtaining of advances or credit, and which do not in the aggregate materially detract from the value of its property or assets or materially impair the use thereof in the operation of its business;

(iv) Liens on property or assets of a Restricted Subsidiary to secure obligations of such Restricted Subsidiary to the Company or another Restricted Subsidiary;

(v) any Lien existing on any property of any corporation at the time it becomes a Restricted Subsidiary, or existing prior to the time of acquisition upon any property acquired by the Company or any Restricted Subsidiary through

purchase, merger or consolidation or otherwise, whether or not assumed by the Company or any Restricted Subsidiary or placed upon property at the time of acquisition by the Company or any Restricted Subsidiary or within 12 months thereafter to secure not more than 90% of (or to secure Debt incurred to pay not more than 90% of) the purchase price thereof, provided that (a) any such Lien shall not encumber any other property of the Company or such Restricted Subsidiary other than leases, maintenance contracts or other interests relating to such property which are customarily encumbered to secure the payment of Debt incurred to pay the purchase price of property, (b) the aggregate amount secured by all such Liens (excluding amounts secured by Liens on railroad rolling stock and other transportation equipment) and any Liens permitted by clause (vi) below shall not exceed 3% of Consolidated Tangible Net Worth, and (c) the Company or such Restricted Subsidiary shall be entitled to incur at least one dollar of additional unsecured Senior Funded Debt under Section 6.05(d) hereof;

(vi) any Lien renewing, extending or refunding any Lien permitted by clause (v) above, provided that the principal amount secured is not increased, and the Lien is not extended to other property; and

(vii) Liens represented by any equipment trust agreement or other financing agreement relating to the financing or refinancing of railroad rolling stock or other transportation equipment if the Debt secured thereby is permitted by Section 6.05(d).

(d) Debt. Create, incur, assume, guarantee or in any way become liable for any Senior Funded Debt or create, incur, assume or suffer to exist any Subordinated Funded Debt or Current Debt, except:

(i) Senior Funded Debt evidenced by the Trust Certificates;

(ii) Funded or Current Debt of any Restricted Subsidiary to the Company or another Restricted Subsidiary;

(iii) Senior Funded Debt of the Company or any Restricted Subsidiary incurred prior to April 1, 1980, if (a) after giving effect thereto and to the concurrent repayment of any Funded Debt, Consolidated Senior Funded Debt shall not exceed an amount equal to 525% of Consolidated Borrowing Base, and (b) any such Senior Funded Debt of any Restricted Subsidiary shall also constitute Purchase Money Debt or be evidenced by a Capitalized Lease;

(iv) Senior Funded Debt of the Company or any Restricted Subsidiary incurred after March 31, 1980, and prior to April 1, 1983, if (a) at the date of such incurrence Consolidated Earnings Available for Interest Coverage shall not be less than 125% of Consolidated Interest Expense, (b) after giving effect thereto and to the concurrent repayment of any Funded Debt, Consolidated Senior Funded Debt shall not exceed an amount equal to 525% of Consolidated Borrowing Base, and (c) any such Senior Funded Debt of any Restricted Subsidiary shall also constitute Purchase Money Debt or be evidenced by a Capitalized Lease;

(v) Senior Funded Debt of the Company or any Restricted Subsidiary incurred after March 31, 1983, if (a) at the date of such incurrence Consolidated Earnings Available for Interest Coverage shall not be less than 125% of Consolidated Interest Expense, (b) after giving effect thereto and to the concurrent repayment of any Funded Debt, Consolidated Senior Funded Debt shall not exceed an amount equal to 450% of Consolidated Borrowing Base, and (c) any such Senior Funded Debt of any Restricted Subsidiary shall also constitute Purchase Money Debt or be evidenced by a Capitalized Lease;

(vi) Subordinated Funded Debt of the Company if after giving effect thereto the aggregate Subordinated Funded Debt shall not exceed 50% of Consolidated Shareholders' Equity; and

(vii) Current Debt of the Company or any Restricted Subsidiary, provided that during the twelve months' period immediately preceding any day on which Consolidated Current Debt is outstanding there shall have been a period of at least 45 consecutive days during which there was either no Consolidated Cur-

rent Debt then outstanding or the aggregate amount of Consolidated Current Debt outstanding on each of such days could have been incurred as Consolidated Senior Funded Debt without violating the provisions of this Section 6.05(d).

(e) Restricted Investments. Make or permit to remain outstanding any Restricted Investment in or to any Person, except that the Company or any Restricted Subsidiary may:

(i) make or permit to remain outstanding loans or advances to any Restricted Subsidiary;

(ii) own, purchase or acquire stock, obligations or securities of a Restricted Subsidiary or of a corporation which immediately after such purchase or acquisition will be a Restricted Subsidiary;

(iii) acquire and own stock, obligations or securities received in settlement of debts (created in the ordinary course of business) owing to the Company or any Restricted Subsidiary;

(iv) own, purchase or acquire Investments;  
and

(v) make or permit to remain outstanding loans or advances or capital contributions to, or own, purchase or acquire stock, obligations or securities of, or sell property at less than fair market value to, any other Person, provided that the aggregate amount expended (including as an expenditure the amount by which the fair market value exceeds the cost basis of any property sold) pursuant to any such investment, purchase, loan, advance, contribution or sale (other than those referred to in clauses (i) through (iv) of this Section 6.05(e)) would have been permitted to be paid as a Restricted Payment pursuant to Section 6.05(b);

and except that any Restricted Subsidiary may make loans or advances to, or acquire stock, obligations or securities of, the Company, provided that after giving effect

thereto the aggregate amount of such loans and advances outstanding plus the aggregate cost of such securities so purchased shall not exceed \$500,000 for all Restricted Subsidiaries.

(f) Sale of Stock and Debt of Restricted Subsidiary. Sell or otherwise dispose of, or part with control of, any shares of stock or Funded Debt or Current Debt of any Restricted Subsidiary, except to the Company or another Restricted Subsidiary, and except that all shares of stock and Debt of any Restricted Subsidiary at the time owned by or owed to the Company and all Restricted Subsidiaries may be sold as an entirety for consideration which represents the fair value (as determined in good faith by the Board of Directors of the Company) at the time of sale of the shares of stock and Debt so sold, provided that the tangible net worth of such Restricted Subsidiary (computed in the same manner as Consolidated Tangible Net Worth) does not constitute in excess of 5% of Consolidated Tangible Net Worth and that such Restricted Subsidiary shall not have contributed in excess of 5% of an amount equal to the average of Consolidated Net Earnings for the three fiscal years (or any fiscal year if there shall be less than three) then most recently ended; further provided that immediately after such sale the Company and its Restricted Subsidiaries shall be able to incur an additional One Dollar of Consolidated Senior Funded Debt without violating the provisions of Section 6.05(d), and further provided that, at the time of such sale, such Restricted Subsidiary shall not own, directly or indirectly, any shares of stock or Debt of the Company or of any other Restricted Subsidiary (unless all of the shares of stock and Debt of such other Restricted Subsidiary owned, directly or indirectly, by the Company and all Restricted Subsidiaries are simultaneously being sold as permitted by this Section 6.05(f)).

(g) Merger and Sale of Assets. Merge or consolidate with any other corporation or sell, lease or transfer or otherwise dispose of all of or a substantial part (i.e., assets which constitute more than 5% of the consolidated assets of the Company and all Restricted Subsidiaries or which have contributed more than 5% of an amount equal to the average of Consolidated Net Earnings for the three fiscal years (or any fiscal year if there shall be less than three) then most recently

ended) of its assets, to any Person, except that:

(i) any Restricted Subsidiary may merge with the Company (provided that the Company shall be the continuing or surviving corporation) or with any one or more other Restricted Subsidiaries;

(ii) any Restricted Subsidiary may sell, lease, transfer or otherwise dispose of any of its assets to the Company or another Restricted Subsidiary;

(iii) any Restricted Subsidiary may sell or otherwise dispose of all or substantially all of its assets subject to the conditions specified in Section 6.05(f) with respect to a sale of the stock of such Restricted Subsidiary;

(iv) the Company may merge with any other corporation, provided that (a) the Company shall be the continuing or surviving corporation, or, if the Company shall not be the continuing or surviving corporation, then such other continuing or surviving corporation (x) shall be a corporation duly organized, validly existing and in good standing under the laws of the United States of America or a state thereof, (y) shall have, immediately prior to such merger, shareholders' equity of not less than \$250,000,000 and (z) shall have expressly assumed all the liabilities, obligations, covenants and agreements (other than that contained in Section 6.05(k) hereof) under this Agreement and the Trust Certificates pursuant to a written instrument in form and substance satisfactory to the Trustee, (b) the continuing or surviving corporation shall, immediately after such merger be able to incur an additional One Dollar of Senior Funded Debt without violating the provisions of Section 6.05(d) and (c) no Default or Event of Default shall exist immediately after such merger;

(v) any Restricted Subsidiary may merge with any Unrestricted Subsidiary, provided that (a) the Restricted Subsidiary shall be the continuing or surviving corporation, (b) the Restricted Subsidiary shall have assumed all of the Debt of the Unrestricted Subsidiary, (c) the Restricted Sub-



sidiary shall be entitled to incur at least One Dollar of additional Senior Funded Debt under Section 6.05(d) immediately after such merger (and after giving effect thereto), and (d) no Default or Event of Default shall exist immediately after such merger; and

(vi) the Company or any Restricted Subsidiary may sell all or any part of its assets (other than real property) in connection with an arrangement with a lender or investor or to which such lender or investor is a party if such arrangement provides for the leasing by the Company or such Restricted Subsidiary of such property and the Debt incurred in such an arrangement is permitted by Section 6.05(d).

(h) Sale and Lease-Back. Enter into any arrangement with any lender or investor or to which such lender or investor is a party providing for the leasing by the Company or any Restricted Subsidiary of real property which has been or is to be sold or transferred by the Company or any Restricted Subsidiary to such lender or investor on the security of such property or rental obligations of the Company or any Restricted Subsidiary.

(i) Sale or Discount of Receivables. Sell with recourse, or discount or otherwise sell for less than the face value thereof, any of its notes or accounts receivable, except that the Company may sell with recourse lease accounts receivable in the ordinary course of business.

(j) Certain Contracts. Enter into or be a party to:

(i) any contract providing for the making of loans, advances or capital contributions to any Person other than a Restricted Subsidiary (except where the obligation is limited to a fixed maximum amount and the incurrence of the Senior Funded Debt represented thereby shall then be permitted by Section 6.05(d)) or for the purchase of any property from any Person, in each case in order to enable such Person to maintain working capital, net worth or any other balance sheet condition or to pay debts, dividends or expenses;

(ii) any contract for the purchase of mate-

rials, supplies or other property or services if such contract (or any related document) requires that payment for such materials, supplies or other property or services shall be made regardless of whether or not delivery of such materials, supplies or other property or services is ever made or tendered;

(iii) any contract to rent or lease (as lessee) any real or personal property if such contract (or any related document) provides that the obligation to make payments thereunder is absolute and unconditional under conditions not customarily found in commercial leases then in general use or requires that the lessee purchase or otherwise acquire securities or obligations of the lessor, except such agreements to rent or lease where the obligation is limited to a fixed maximum amount and the incurrence of the Senior Funded Debt represented thereby shall then be permitted by Section 6.05(d);

(iv) any contract for the sale or use of materials, supplies or other property, or the rendering of services if such contract (or any related document) requires that payment for such materials, supplies or other property, or the use thereof, or payment for such services, shall be subordinated to any indebtedness (of the purchaser or user of such materials, supplies or other property or the Person entitled to the benefit of such services) owed or to be owed to any Person; or

(v) any other contract which, in economic effect, is substantially equivalent to a guarantee, except: (A) for endorsements of negotiable instruments for collection in the ordinary course of business; (B) where the obligation is limited to a fixed maximum amount and the incurrence of the Senior Funded Debt represented thereby shall then be permitted by Section 6.05(d); (C) indemnities of trustees, lessors, lenders and third party security holders in connection with financings to which it is a party pursuant to indemnification provisions customary in such financings; (D) indemnities of its officers, directors and employees for acts undertaken in their corporate capacities; (E) indemnities of purchasers, sellers, underwriters, brokers, dealers and dealer-managers of securities of the Company

(of which the Company may be deemed to be an issuer or otherwise) in connection with the offer, sale or purchase of such securities pursuant to indemnification provisions customary in such offers, sales or purchases; (F) indemnities of beneficial owners and lessors for the loss of certain tax benefits in connection with lease financing transactions in which it is the lessee, and indemnify lessees for the loss of investment tax credit in connection with leases in which it is the lessor and is passing through such investment tax credit to the lessee, all pursuant to customary indemnification provisions as found in equipment leases; and (G) payment of expenses of trustees, lessors, lenders and third party security holders and their respective counsel in connection with financings to which it is a party.

(k) Line of Business. Enter into a line of business other than transportation or leasing or other similar services unless such business is closely related to the business then being carried on by the Company and its Restricted Subsidiaries.

(l) Transactions With Stockholders and Affiliates. Directly or indirectly, purchase, acquire or lease any property from, or sell, transfer or lease any property to, or otherwise deal with, in the ordinary course of business or otherwise (i) any Affiliate, (ii) any Person owning, beneficially or of record, directly or indirectly, either individually or together with all other Persons to whom such Person is related by blood, adoption or marriage, stock of the Company (of any class having ordinary voting power for the election of directors) aggregating 5% or more of such voting power or (iii) any Person related by blood, adoption or marriage to any Person described or coming within the provisions of clause (i) or (ii) of this Section 6.05(l), provided that (a) the Company may sell to, or purchase (within the limitations of Section 6.05(b)) from, any such Person shares of the Company's stock, (b) any such Person may be a director, officer or employee of the Company or any Restricted Subsidiary and may be paid reasonable compensation in connection therewith, and (c) such acts and transactions prohibited by this Section 6.05(l) may be performed or engaged in on terms not less favorable to the Company than if no such relationship

described in clauses (i), (ii) and (iii) above existed and than would be obtainable at the time in comparable transactions of the Company in arm's-length dealings with third parties. For the purposes of clause (c) of the foregoing proviso, any such act or transaction shall be deemed to be performed or engaged in on terms not less favorable to the Company if it shall involve an aggregate benefit to a Person or Affiliate referred to in clause (i), (ii) or (iii) above of less than \$2,000 per year.

(m) Commercial Paper. In the case of the Company, issue or sell any commercial paper or other similar short-term Debt owing to lenders other than banks unless, after giving effect thereto, the aggregate principal amount thereof then outstanding shall not exceed the aggregate amount of bank credit lines then unused and available to the Company under then outstanding credit or loan agreements.

(n) Leases. Lease any of the Trust Equipment to any lessee other than pursuant to a Lease.

SECTION 6.06. Covenant To Secure Trust Certificates. The Company covenants that, if it or any Restricted Subsidiary shall create or assume any Lien upon any of its property or assets, whether now owned or hereafter acquired, other than Liens excepted by the provisions of Section 6.05(c) (unless prior written consent to the creation or assumption thereof shall have been obtained pursuant to Section 9.03 and such consent shall also contain a waiver of the requirements of this Section 6.06) it will make or cause to be made effective provision whereby the Trust Certificates will be secured by such Lien equally and ratably with any and all other Funded or Current Debt thereby secured as long as any such other Funded or Current Debt shall be so secured.

## ARTICLE SEVEN

### CONCERNING THE HOLDERS OF TRUST CERTIFICATES

SECTION 7.01. Evidence of Action Taken by Holders of Trust Certificates. Whenever in this Agreement it is provided that the Holders of a specified percentage in aggregate unpaid principal amount of the Trust Certificates may take any action (including the making of any demand or request, the giving of any notice, consent or waiver or the

taking of any other action), the fact that at the time of taking any such action the Holders of such specified percentage have joined therein may be evidenced by any instrument or any number of instruments of similar tenor executed by Holders of Trust Certificates in person or by agent or proxy appointed in writing.

SECTION 7.02. Proof of Execution of Instruments and of Holding of Trust Certificates. Proof of the execution of any instrument by a Holder of Trust Certificates or his agent or proxy and proof of the holding by any Person of any of the Trust Certificates shall be sufficient if made in the following manner:

The fact and date of the execution by any such Person of any instrument may be proved by the certificate of any notary public or other officer of any jurisdiction within the United States of America authorized to take acknowledgments of deeds to be recorded in such jurisdiction that the person executing such instrument acknowledged to him the execution thereof, or by an affidavit of a witness to such execution sworn to before any such notary or other such officer. Where such execution is by or on behalf of any legal entity other than an individual, such certificate or affidavit shall also constitute proof of the authority of the Person executing the same.

The ownership of Trust Certificates may be proved by the register of such Trust Certificates or by a certificate of the registrar thereof.

SECTION 7.03. Trust Certificates Owned by the Company. In determining whether the Holders of the requisite unpaid principal amount of the Trust Certificates have concurred in any direction, request or consent under this Agreement, Trust Certificates which are owned by the Company or by any other obligor on the Trust Certificates or by an Affiliate of the Company or any such other obligor shall be disregarded, except that for the purpose of determining whether the Trustee shall be protected in relying on any such direction, request or consent, only Trust Certificates which are actually known to the Trustee at its Corporate Trust Office to be so owned shall be disregarded.

SECTION 7.04. Right of Revocation of Action Taken. At any time prior to (but not later than) the evidencing to the Trustee, as provided in Section 7.01, of the taking of any action by the Holders of the percentage in aggregate unpaid principal amount of the Trust Certificates specified

in this Agreement in connection with such action, any Holder of a Trust Certificate the serial number of which is shown by the evidence to be included in the Trust Certificates the Holders of which have consented to such action may, by filing written notice with the Trustee at its Corporate Trust Office and upon proof of holding as provided in Section 7.02, revoke such action insofar as concerns such Trust Certificate. Except as aforesaid any such action taken by the Holder of any Trust Certificate shall be conclusive and binding upon such Holder and upon all future Holders and owners of such Trust Certificate and of any Trust Certificate issued in exchange or substitution therefor, irrespective of whether or not any notation in regard thereto is made upon such Trust Certificate. Any action taken by the Holders of the percentage in aggregate unpaid principal amount of the Trust Certificates specified in this Agreement in connection with such action shall be conclusive and binding upon the Company, the Trustee and the Holders of all the Trust Certificates.

## ARTICLE EIGHT

### THE TRUSTEE

SECTION 8.01. Acceptance of Trust. The Trustee hereby accepts the trust imposed upon it by this Agreement, and covenants and agrees to perform the same as herein expressed.

SECTION 8.02. Duties and Responsibilities of the Trustee. In case an Event of Default has occurred (which has not been cured), the Trustee shall exercise such of the rights and powers vested in it by this Agreement, and use the same degree of care and skill in their exercise as a prudent man would exercise or use under the circumstances in the conduct of his own affairs. The Trustee shall not be deemed to have knowledge of any Default or Event of Default under this Agreement prior to the time it shall have obtained actual knowledge thereof at its Corporate Trust Office.

No provision of this Agreement shall be construed to relieve the Trustee from liability for its own negligent action, its own negligent failure to act, or its wilful misconduct, except that:

(a) prior to the occurrence of an Event of Default and after the curing of all Events of Default which may have occurred:

(1) the duties and obligations of the Trustee shall be determined solely by the express provisions of this Agreement, and the Trustee shall not be liable except for the performance of such duties and obligations as are specifically set forth in this Agreement, and no implied covenants or obligations shall be read into this Agreement against the Trustee; and

(2) in the absence of bad faith on the part of the Trustee, the Trustee may conclusively rely as to the truth of the statements and the correctness of the opinions expressed therein, upon any certificates or opinions furnished to the Trustee and conforming to the requirements of this Agreement; but in the case of any such certificates or opinions which by any provision hereof are specifically required to be furnished to the Trustee, the Trustee shall be under a duty to examine the same to determine whether or not they conform to the requirements of this Agreement;

(b) the Trustee shall not be liable for any error of judgment made in good faith, unless it shall be proved that the Trustee was negligent in ascertaining the pertinent facts; provided, however, that the foregoing provisions of this subparagraph (b) shall not excuse the Trustee from liability for its action or inaction which was contrary to the express provisions of this Agreement;

(c) the Trustee shall not be liable with respect to any action taken, suffered or omitted to be taken by it in good faith in accordance with the direction of the Holders of not less than 66-2/3% in aggregate unpaid principal amount of the then outstanding Trust Certificates relating to the time, method and place of conducting any proceeding for any remedy available to the Trustee, or exercising any trust or power conferred upon the Trustee, under this Agreement;

(d) the Trustee may rely and shall be protected in acting or refraining from acting upon any resolution, certificate, statement, instrument, opinion, report, notice, request, consent, order, Trust Certificate, guarantee or other paper or document believed by it to be genuine and to have been signed or presented by the proper party or parties;

(e) the Trustee may consult with counsel and any Opinion of Counsel shall be full and complete authorization and protection in respect of any action taken, suffered or omitted by it hereunder in good faith and in accordance with such Opinion of Counsel;

(f) the Trustee shall be under no obligation to exercise any of its rights or powers vested in it by this Agreement at the request, order or direction of any of the Holders of the Trust Certificates, pursuant to the provisions of this Agreement, unless such Holders shall have offered to the Trustee reasonable security or indemnity against the costs, expenses and liabilities which might be incurred therein or thereby; and

(g) none of the provisions contained in this Agreement shall require the Trustee to expend or risk its own funds or otherwise incur personal financial liability in the performance of any of its duties or in the exercise of any of its rights or powers, if there is reasonable ground for believing that the repayment of such funds or adequate indemnity against such risk or liability is not reasonably assured to it.

Whether or not therein expressly so provided, every provision of this Agreement relating to the conduct or affecting the liability of or affording protection to the Trustee shall be subject to the provisions of this Section 8.02.

SECTION 8.03. Application of Rentals. The Trustee covenants and agrees to apply the rentals received by it under Section 4.04 when and as the same shall be received, and to the extent that such rentals shall be sufficient therefor, for the purposes specified in Section 4.04.

The Trustee shall not be required to undertake any act or duty in the way of insuring, taking care of or taking possession of the Trust Equipment or to undertake any other act or duty under this Agreement until fully indemnified by the Company or by one or more Holders of the Trust Certificates against all liability and expenses; and the Trustee shall not be responsible for the filing or recording or refiling or rerecording of this Agreement or of any supplement hereto or statement of new numbers or any other statement or document that may be permitted or required to be filed, recorded, refiled or rerecording in any jurisdiction to protect or perfect any of the security interests contemplated hereby.



#### SECTION 8.04. Funds Held by Trustee; Investments.

Any money at any time paid to or held by the Trustee hereunder until paid out by the Trustee as herein provided may be carried by the Trustee on noninterest bearing deposit with itself.

At any time, and from time to time, if at the time no Event of Default shall have occurred and be continuing, the Trustee, on Request (and as directed in such Request), shall invest and reinvest Deposited Cash held by it or cash deposited with it pursuant to Sections 2.03(e), 4.06, 4.08 or 4.09 (hereinafter in this Section called "Replacement Funds") in Investments, at such prices, including any premium and accrued interest, as are set forth in such Request, such Investments to be held by the Trustee in trust for the benefit of the Holders of the Trust Certificates.

The Trustee shall, on Request, or the Trustee may, in the event funds are required for payment against acceptance of Trust Equipment or the payment or prepayment of Trust Certificates, sell such Investments, or any portion thereof, and restore to Deposited Cash or Replacement Funds, as the case may be, the proceeds of any such sale up to the amount paid for such Investments, including accrued interest.

The Trustee shall, to the extent received, restore to Deposited Cash or Replacement Funds, as the case may be, out of rent received by it for that purpose under the provisions of Section 4.04(1), an amount equal to any expenses incurred in connection with any purchase or sale of Investments and also an amount equal to any loss of principal incident to the sale or redemption of any Investments for a sum less than the amount paid therefor, including accrued interest at the time of purchase.

Until such time as, to the actual knowledge of the Trustee (obtained at its Corporate Trust Office), there shall be an Event of Default, the Company shall be entitled to receive any interest (in excess of accrued interest paid from Deposited Cash or Replacement Funds at the time of purchase) or other profit which may be realized from any sale or redemption of Investments.

SECTION 8.05. Trustee Not Liable for Delivery Delays or Defects in Equipment or Title. The Trustee shall not be liable to anyone for any delay in the delivery of any of the Trust Equipment or for any default on the part of the manufacturers thereof or of the Company, or for any defect

in any of the Trust Equipment or in the title thereto, nor shall anything herein be construed as a warranty on the part of the Trustee in respect thereof or as a representation on the part of the Trustee in respect of the value thereof or in respect of the title thereto or the security afforded thereby.

The Trustee may perform its powers and duties hereunder by or through such attorneys and agents as it shall appoint, and shall be answerable only for its own negligent acts, negligent failures to act and wilful misconduct and not for the default or misconduct of any attorney or agent appointed by it with reasonable care. The Trustee shall not be responsible in any way for, and makes no representation with respect to, the recitals herein contained or the execution or validity or enforceability of this Agreement or the Trust Certificates (except for its own execution thereof) or the guarantee by the Company.

The Trustee shall be entitled to receive payment of all of its expenses and disbursements hereunder, including reasonable counsel fees, and to receive reasonable compensation for all services rendered by it in the execution of the trust hereby created, all of which shall be paid by the Company.

The Trustee in its individual capacity may own, hold and dispose of Trust Certificates.

Any moneys at any time held by the Trustee hereunder shall, until paid out or invested by the Trustee as herein provided, be held by it in trust as herein provided for the benefit of the Holders of the Trust Certificates.

SECTION 8.06. Resignation and Removal; Appointment of Successor Trustee. (a) The Trustee may resign and be discharged of the trust created by this Agreement by giving 30 days' written notice to the Company and the Holders of Trust Certificates. Such resignation shall take effect upon receipt by the Trustee of an instrument of acceptance executed by a successor trustee as herein provided in this Section.

(b) The Trustee may be removed at any time by an instrument in writing signed by the Holders of not less than 66-2/3% in aggregate unpaid principal amount of the Trust Certificates then outstanding, delivered to the Trustee and to the Company.

(c) If at any time the Trustee shall resign or be removed or otherwise become incapable of acting or, if at any time a vacancy shall occur in the office of the Trustee for any other cause, a successor trustee may be appointed by the Holders of a majority in aggregate unpaid principal amount of the then outstanding Trust Certificates by an instrument in writing delivered to the Company and the Trustee. Until a successor trustee shall be appointed by the Holders of Trust Certificates as herein authorized, the Company by an instrument in writing executed by order of its board of directors or an executive committee thereof shall appoint a trustee to fill such vacancy. A successor trustee so appointed by the Company shall immediately and without further act be superseded by a successor trustee appointed by the Holders of Trust Certificates in the manner provided above if such appointment is made within one year after completion of the notice, in the manner provided in the next succeeding paragraph, of the appointment of a successor trustee by the Company. Every successor trustee appointed pursuant to this Section shall be a national bank or a bank or trust company incorporated under the laws of the State of New York having its principal office in The City of New York and having a capital and surplus of not less than \$100,000,000, if there be such an institution willing, qualified and able to accept the trust upon reasonable or customary terms.

(d) The Company shall give notice to the Holders of all outstanding Trust Certificates of each resignation or removal of the then Trustee and of each appointment by the Company of a successor trustee pursuant to this Section 8.06.

SECTION 8.07. Acceptance of Appointment by Successor Trustee. Any successor trustee appointed as provided in Section 8.06 shall execute, acknowledge and deliver to the Company and to its predecessor trustee an instrument accepting such appointment hereunder, and, subject to the provisions of Section 8.06(a), thereupon the resignation or removal of the predecessor trustee shall become effective and such successor trustee, without any further act, deed or conveyance, shall become vested with all the rights, powers, duties and obligations of its predecessor hereunder, with like effect as if originally named as Trustee herein; but, nevertheless, on the Request of the Company or written request of the successor trustee, upon payment of its charges then unpaid, the trustee ceasing to act shall execute and deliver an instrument transferring to such successor trustee all the rights and powers of the trustee so ceasing to act.

Upon written request of any such successor trustee, the Company shall execute any and all instruments in writing for more fully and certainly vesting in and confirming to such successor trustee all such rights and powers. Any trustee ceasing to act shall, nevertheless, retain a lien upon all property or funds held or collected by such trustee to secure any amounts then due it pursuant to the provisions of Section 8.05.

SECTION 8.08. Merger or Consolidation of Trustee. Any corporation into which the Trustee may be merged or converted or with which it may be consolidated or any corporation resulting from any merger, conversion or consolidation to which the Trustee shall be a party shall be the successor of the Trustee hereunder, provided such corporation shall be qualified under the provisions of Section 8.06, without the execution or filing of any paper or any further act on the part of any of the parties hereto, anything herein to the contrary notwithstanding.

SECTION 8.09. Return of Certain Moneys to the Company. Notwithstanding any provision of this Agreement, any moneys paid to the Trustee which are applicable to the payment of the principal of, or interest on, any Trust Certificates and which remain unclaimed for five years after the day when such moneys were due and payable shall then be repaid to the Company upon Request, and the Holders of such Trust Certificates shall thereafter be entitled to look only to the Company for payment thereof and all liability of the Trustee with respect to such moneys shall thereupon cease; provided, however, that before the repayment of such moneys to the Company as aforesaid, the Trustee may first publish a notice, in such form as may be deemed appropriate by the Trustee, in respect of the Trust Certificates so payable and not presented and in respect of the provisions hereof relating to the repayment to the Company of the moneys held for the payment thereof.

## ARTICLE NINE

### MISCELLANEOUS

SECTION 9.01. Rights Confined to Parties and Holders. Nothing expressed or implied herein is intended or shall be construed to confer upon or to give to any Person, other than the parties hereto and the holders of the Trust Certificates, any right, remedy or claim under or by reason of this Agreement or of any term, covenant or condition hereof, and all the terms, covenants, conditions, promises and agreements contained herein shall be for the sole and exclusive benefits of the parties hereto and their successors and of the Holders of the Trust Certificates.

SECTION 9.02. No Recourse. No recourse under any obligation, covenant, or agreement of this Agreement, or of the guarantee endorsed on any Trust Certificate, shall be had against any incorporator, stockholder, officer or director, past, present or future, of the Company, as such, solely by reason of the fact that such person is an incorporator, stockholder, officer or director, whether by virtue of any constitutional provision, statute or rule of law or by the enforcement of any assessment or penalty or otherwise, all such liability, whether at common law, in equity, by any constitutional provision, statute or otherwise, of incorporators, stockholders, officers or directors being forever released as a condition of and as consideration for the execution of this Agreement.

SECTION 9.03. Amendment or Waiver. Any provision of this Agreement may be amended or waived with the written consent of the Holders of not less than 66-2/3% of the aggregate unpaid principal amount of the Trust Certificates then outstanding; provided, however, that without the consent of each Holder of any Trust Certificate affected thereby, no such amendment or waiver shall (1) reduce the amount of principal or premium, change the amount or dates of payment of installments of principal or of payments of premium, or reduce the rate or extend the time of payment of interest with respect to the Trust Certificates, (2) reduce the amount of or extend the time of payment of any rentals payable under the Agreement or release or provide for the release of any of the Trust Equipment or any other property or cash held by the Trustee in trust, otherwise than as expressly permitted by the present terms of this Agreement, or (3) reduce the percent of the aggregate unpaid principal amount of Trust Certificates then outstanding, the Holders of which are required to approve any amendment or to effect any waiver.

SECTION 9.04. Binding Upon Assigns. Except as otherwise provided herein, the provisions of this Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns.

SECTION 9.05. Notices. All demands, notices and communications hereunder shall be in writing and shall be deemed to have been duly given if personally delivered at or mailed postage prepaid by registered mail to (a) in the case of the Company, Three Embarcadero Center, San Francisco, California 94111, Attention of Vice President-Finance, or such other address as may hereafter be furnished to the Trustee in writing by the Company, (b) in the case of the Trustee, 30 West Broadway, New York, New York 10015, or such other

address as may hereafter be furnished to the Company in writing by the Trustee and (c) in the case of any Holder of Trust Certificates, at such address as provided in the Purchase Agreement or as otherwise furnished in writing to the Trustee. An affidavit by any person representing or acting on behalf of the Company, the Trustee or the Holders of the Trust Certificates as to such mailing, having the registry receipt attached, shall be conclusive evidence of the giving of such demand, notice or communication.

SECTION 9.06. Effect of Headings. The Article and Section headings herein are for convenience only and shall not affect the construction hereof.

SECTION 9.07. Date Executed. This Agreement shall be deemed to have been executed on the date of the acknowledgment thereof by the officer of the Trustee who signed it on behalf of the Trustee. This Agreement shall not be deemed to be delivered by the Company until accepted by the Trustee in New York, New York.


SECTION 9.08. Governing Law. The provisions of this Agreement, and all the rights and obligations of the parties hereunder, shall be governed by the laws of the State of New York.

IN WITNESS WHEREOF, the Company and the Trustee have caused their names to be signed hereto by their respective officers thereunto duly authorized and their respective corporate seals, duly attested, to be hereunto affixed as of the day and year first above written in New York, New York.

MORGAN GUARANTY TRUST COMPANY  
OF NEW YORK, as Trustee,

[Corporate Seal]

Attest:

  
Assistant Secretary

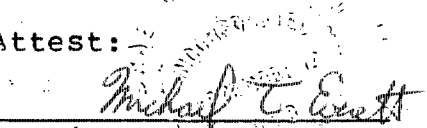
by

  
Trust Officer

BRAE CORPORATION,

[Corporate Seal]

Attest:

  
Assistant Secretary

by

  
Vice President

STATE OF NEW YORK, )  
 ) SS.:  
 COUNTY OF NEW YORK, )

On the 13th day of July 1979, before me personally came *P.J. Crooke*, to me known, who, being by me duly sworn, did depose and say that he resides at *Lambertville, N.J.*; that he is a Trust Officer of MORGAN GUARANTY TRUST COMPANY OF NEW YORK, one of the corporations described in and which executed the above instrument; that he knows the corporate seal of said corporation; that the seal affixed to the said instrument is such corporate seal; that it was so affixed by the authority of the Board of Directors of said corporation; and that he signed his name thereto by like authority.

*Maureen McShane*  
 \_\_\_\_\_  
 Notary Public

(SEAL)

MAUREEN McSHANE  
 NOTARY PUBLIC, State of New York  
 No. 01MC4649300  
 Qualified in Kings County  
 Certificate Filed in New York County  
 Commission Expires March 30, 1981

STATE OF NEW YORK, )  
 ) SS.:  
 COUNTY OF NEW YORK, )

On the 13th day of July 1979, before me personally came Donald H. Gleason, to me known, who, being by me duly sworn, did depose and say that he resides at 44 Tuscaloosa, Atherton, California; that he is the Vice President of Operations of BRAE CORPORATION, one of the corporations described in and which executed the above instrument; that he knows the corporate seal of said corporation; that the seal affixed to the said instrument is such corporate seal; that it was so affixed by authority of the Board of Directors of said corporation; and that he signed his name thereto by like authority.

*William Betz*  
 \_\_\_\_\_  
 Notary Public

(SEAL)

WILLIAM BETZ  
 NOTARY PUBLIC, State of New York  
 No. 24-4591707  
 Qualified in Kings County  
 Cert. filed in New York County  
 Commission Expires March 30, 1981

## SCHEDULE A

<u>Lessee</u>	<u>No. of Boxcars</u>	<u>Date of Leases</u>	<u>Term</u>	<u>Equipment Identification Numbers (Both Inclusive)</u>	<u>Description</u>	<u>AAR Mechanical Designation</u>
1. Railroad Consultants*	50	December 1, 1978	Approx- imately 15 years	UO 1500- UO 1549	50'6", 70-ton	XM
2. Berlin- Mills Railway, Inc.	300	Nov. 2, 1978,	Approx- imately 15 years	BMS 00201- BMS 00500	50'6", 70-ton	XM

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\* Railroad Consultants has subleased the boxcars by a sublease dated December 1, 1978, to Union Railroad of Oregon.



## SCHEDULE B

## MAINTENANCE CONTRACT

Lithcote Service Agreement effective August 24,  
1978, between BRAE Corporation and Lithcote Company.

# BRAE

## CORPORATION

### LEASE AGREEMENT

LEASE AGREEMENT, made as of this ..... day of ....., 19 .., between the BRAE CORPORATION, a Delaware corporation, Three Embarcadero Center, San Francisco, California 94111 ("BRAE"), as Lessor, and ....., a ..... corporation, ..... (address of Lessee) ("Lessee"), as Lessee.

#### 1. Scope of Agreement

A. BRAE agrees to lease to Lessee, and Lessee agrees to lease from BRAE, freight cars as set forth in any lease schedules executed by the parties concurrently herewith or hereafter and made a part of this Agreement. The word "Schedule" as used herein includes the Schedule or Schedules executed herewith and any additional Schedules and amendments thereto, each of which when signed by both parties shall be a part of this Agreement. The scheduled items of equipment are hereinafter called collectively the "Cars."

B. It is the intent of the parties to this Agreement that BRAE shall at all times be and remain the lessor of the Cars. Lessee agrees that it will at no time take any action or file any document which is inconsistent with the foregoing intent and that it will take such action and execute such documents as may be necessary to accomplish this intent.

#### 2. Term

A. This Agreement shall remain in full force until it shall have been terminated as to all of the Cars as provided herein. The lease pursuant to this Agreement with respect to each Car shall commence when such Car has been delivered, as provided in Section 3A hereof, and shall continue until ..... years (the "initial lease term") have expired from the actual date of delivery, as provided in Section 3A hereof, for the last of the Cars described on the Schedule on which such Car is described.

B. If this Agreement has not been earlier terminated and no default has occurred and is continuing, it shall automatically be extended for not more than five consecutive periods of twelve months each (the "extended lease term") with respect to all of the Cars described on each Schedule, provided, however, that BRAE or Lessee may terminate this Agreement at the expiration of the initial or any extended lease term as to all, but not fewer than all, of the Cars on any Schedule by written notice delivered to the other not less than twelve months prior to the end of the initial or such extended lease term, as the case may be.

#### 3. Supply Provisions

A. BRAE will inspect each of the Cars tendered by the manufacturer for delivery to Lessee. Prior to such inspection, however, Lessee shall confirm in writing to BRAE that the sample Car which will be made available for Lessee's inspection prior to the commencement of deliveries conforms to the specifications of the equipment agreed to by Lessee. Upon such approval by Lessee and BRAE's determination that the Car conforms to the specifications ordered by BRAE and to all

## SCHEDULE C

applicable governmental regulatory specifications, and if this Agreement has not then been terminated, BRAE will accept delivery thereof at the manufacturer's facility and shall notify Lessee in writing of such acceptance. Each of the Cars shall be deemed delivered to Lessee upon acceptance by BRAE. The Cars shall be moved to Lessee's railroad line at no cost to Lessee as soon after acceptance of delivery by BRAE as is consistent with mutual convenience and economy. Due to the nature of railroad operations in the United States, BRAE can neither control nor determine when the Cars leased hereunder will actually be available to Lessee for its use on its railroad tracks. Notwithstanding that Lessee may not have immediate physical possession of a Car, the lease hereunder with respect thereto shall commence and Lessee shall pay to BRAE the rent for such Car set forth in this Agreement, all upon acceptance of such Car by BRAE from the manufacturer. To move the Cars to Lessee's railroad line and insure optimal use of the Cars after the first loading of freight for each Car on the railroad line of Lessee (the "initial loading"), BRAE agrees to assist Lessee in monitoring Car movements and, when deemed necessary by Lessee and BRAE, to issue movement orders with respect to such Cars to other railroad lines in accordance with ICC and AAR interchange agreements and rules.

B. Lessee agrees that so long as it shall have on lease any Cars, it shall not lease freight cars from any other party until it shall have received all of the Cars on the Schedule or Schedules.

C. Additional Cars may be leased from BRAE by Lessee only upon the mutual agreement of the parties hereto. Such additional Cars shall be identified in Schedules to this Agreement and shall benefit from and be subject to this Agreement upon execution of the Schedules by BRAE and Lessee. Notwithstanding the execution of any Schedules, including Schedules for additional Cars, the delivery of any Car to Lessee shall be subject to manufacturer's delivery schedules, the availability of financing on terms satisfactory to BRAE and the mutual acknowledgment of the parties that the addition of such Cars is not likely to reduce Utilization (as defined in Section 6A hereof) of all Cars on lease to Lessee to less than        per cent in any calendar quarter. If, due to any of the factors listed in the preceding sentence, fewer than all of the Cars listed on a Schedule shall be delivered to Lessee, the initial lease term shall terminate        years from the delivery date for the final Car actually delivered, as provided in Section 3A hereof.

### 4. Railroad Markings and Record Keeping

A. BRAE and Lessee agree that on or before delivery of any Cars to Lessee, such Cars will be lettered with the railroad markings of Lessee and may also be marked with the name and/or other insignia used by Lessee. BRAE and Lessee further agree that any Car may also be marked with the name of BRAE and any other information required by an owner or secured party under a financing agreement entered into by BRAE in connection with the acquisition of such Car. All such names, insignia and other information shall comply with all applicable regulations.

B. At no cost to Lessee, BRAE shall during the term of this Agreement prepare for Lessee's signature and filing all documents relating to the registration, maintenance and record keeping functions involving the Cars. Such documents shall include but shall not be limited to the following: (i) appropriate AAR documents including an application for relief from AAR Car Service Rules 1 and 2; (ii) registration in the Official Railway Equipment Register and the Universal Machine Language Equipment Register; and (iii) such reports as may be required from time to time by the ICC and/or other regulatory agencies.

## SCHEDULE C

C. Each Car leased hereunder shall be registered at no cost to Lessee in the Official Railway Equipment Register and the Universal Machine Language Equipment Register. BRAE shall, on behalf of Lessee, perform all record keeping functions related to the use of the Cars by Lessee and other railroads in accordance with AAR railroad interchange agreements and rules, such as car hire reconciliation. Correspondence from railroads using such Cars shall be addressed to Lessee at such address as BRAE shall select.

D. All record keeping performed by BRAE hereunder and a record of all payments, charges and correspondence related to the Cars shall be separately recorded and maintained by BRAE in a form suitable for reasonable inspection by Lessee from time to time during BRAE's regular business hours. Lessee shall supply BRAE with such reports, including daily telephone reports of the number of Cars on Lessee's tracks, regarding the use of the Cars by Lessee on its railroad line as BRAE may reasonably request.

### 5. Maintenance, Taxes and Insurance

A. Except as otherwise provided herein, BRAE will pay all costs, expenses, fees and charges incurred in connection with the use and operation of each of the Cars during its initial lease term and any extended lease term, including but not limited to repairs, maintenance and servicing, unless the same was occasioned by the fault of Lessee. Lessee shall inspect all Cars interchanged to it to insure that such Cars are in good working order and condition and shall be liable to BRAE for any repairs required for damage not noted at the time of interchange. Lessee hereby transfers and assigns to BRAE all of its right, title and interest in any warranty in respect of the Cars. All claims or actions on any warranty so assigned shall be made and prosecuted by BRAE at its sole expense and Lessee shall have no obligation to make any claim on such warranty. Any recovery under such warranty shall be payable solely to BRAE.

B. Except as provided in Section 5A hereof, BRAE shall make or cause to be made such inspections of, and maintenance and repairs to, the Cars as may be required. Upon request of BRAE, Lessee shall perform any necessary maintenance and repairs to Cars on Lessee's railroad tracks as may be reasonably requested by BRAE. BRAE shall also make, at its expense, all alterations, modifications or replacement of parts as shall be necessary to maintain the Cars in good operating condition throughout the term of the lease of such Cars. Lessee may make running repairs, at BRAE's expense, to facilitate continued immediate use of a Car, but shall not otherwise make any repairs, alterations, improvements or additions to the Cars without BRAE's prior written consent. If Lessee makes an alteration, improvement or addition to any Car without BRAE's prior written consent, Lessee shall be liable to BRAE for any revenues lost due to such alteration. Title to any such alteration, improvement or addition shall be and remain with BRAE (or its assignee).

C. Lessee will at all times while this Agreement is in effect be responsible for the Cars while on Lessee's railroad tracks in the same manner that Lessee is responsible under Rule 7 of the AAR Car Service and Car Hire Agreement Code of Car Service Rules—Freight for freight cars not owned by Lessee on Lessee's railroad tracks. Lessee shall protect against the consequences of an event of loss involving the Cars while on Lessee's railroad tracks by obtaining insurance. Lessee shall also maintain bodily injury and property damage liability insurance. Lessee shall furnish to BRAE concurrently with the execution hereof and thereafter at intervals of not more than 12 calendar months certificates of insurance with respect to such insurance signed by an independent insurance broker. All insurance shall be taken out in the name of Lessee and BRAE (or its assignee) as their interests may appear.

## 6. Lease Rental

A. Lessee agrees, subject to Section 6D hereof, to pay the following rent to BRAE for the use of the Cars:

(i) BRAE shall receive all payments made to Lessee by other railroad companies for their use or handling of the Cars, including but not limited to mileage charges, straight car hire payments and incentive car hire payments (all of which payments made to Lessee are herein-after collectively referred to as "payments") if the Utilization of all of the Cars delivered to Lessee on an aggregate basis for each calendar year shall be equal to or less than      per cent. For the purpose of determining Utilization, "Car Hour" shall mean one hour during which one Car is on lease hereunder, commencing on      For the purpose of this Agreement, "Utilization" shall mean with respect to any period a fraction the numerator of which is (x) the aggregate number of Car Hours for which payments are earned by the Lessee during such period, and the denominator of which is (y) the aggregate number of Car Hours during such period. In addition, BRAE will receive, as additional rental, all monies earned by the Cars prior to their initial loading.

(ii) In the event Utilization exceeds      per cent in any calendar year, BRAE shall receive an amount equal to the BRAE Base Rental plus an amount equal to      of the payments earned in excess of the BRAE Base Rental. For the purpose hereof, BRAE Base Rental shall be an amount equal to the total payments for the calendar year multiplied by a fraction, the numerator of which is      per cent and the denominator of which is the Utilization for such calendar year. (The above determination of BRAE Base Rental insures that Lessee will, if Utilization is greater than      per cent in any calendar year, receive      of all the payments made by other railroads for use or handling of the Cars in excess of the BRAE Base Rental.)

(iii) If BRAE pays other railroads to move Cars in accordance with Section 3A hereof, except for any payments incurred to deliver such Cars to Lessee's railroad line, Lessee shall reimburse BRAE for such payments, but only from and out of the monies received by Lessee pursuant to Subsection 6A(ii) hereof.

(iv) The rental charges payable to BRAE by Lessee shall be paid from the payments received by Lessee in the following order until BRAE receives the amounts due it pursuant to this Section 6A: (1) incentive car hire payments; (2) straight car hire payments; (3) mileage charges and (4) other.

(v) In the event damage beyond repair or destruction of a Car has been reported in accordance with Rule 7 of the AAR Car Service and Car Hire Agreement Code of Car Hire Rules—Freight and the appropriate amount due as a result thereof is received by BRAE, the damaged or destroyed Car will be removed from the coverage of this Agreement as of the date that car hire payments ceased.

B. The calculations required above shall be made within five months after the end of each calendar year. However, to enable BRAE to meet its financial commitments, BRAE may, prior to such calculations, retain the payments received by it on behalf of Lessee. Further, since the parties desire to determine on a quarterly basis the approximate amount of the rental charges due BRAE, BRAE shall within three months after the end of each calendar quarter, calculate on a quarterly

## SCHEDULE C

basis rather than a yearly basis the amount due it pursuant to this Section 6. Any amounts payable pursuant to the preceding sentence shall be paid promptly following such calculation, *provided, however*, that following the yearly calculation, any amount paid to either party in excess of the amounts required by the yearly calculation shall be promptly refunded to the appropriate party.

C. If at any time during a calendar quarter, the number of days that the Cars have not earned car hire payments is such as to make it mathematically certain that the Utilization in such calendar quarter cannot be equal to or greater than 87.5 per cent, BRAE may, at its option and upon not less than ten (10) days' prior written notice to Lessee, terminate this Agreement as to such Cars as BRAE shall determine.

E. During the term of this Agreement, if any Car remains on Lessee's railroad tracks for more than seven consecutive days, BRAE may, at its option and upon not less than twenty-four (24) hours' prior written notice, terminate this Agreement as to such Car and withdraw such Car from Lessee's railroad tracks. If any such Car remains on Lessee's railroad tracks more than seven consecutive days because Lessee has not given preference to the Cars as specified in Section 3B hereof, Lessee shall be liable for and remit to BRAE an amount equal to the payments Lessee would have earned if such Cars were in the physical possession and use of another railroad for the entire period.

### 7. Possession and Use

A. So long as Lessee shall not be in default under this Agreement, Lessee shall be entitled to the possession, use and quiet enjoyment of the Cars in accordance with the terms of this Agreement and in the manner and to the extent Cars are customarily used in the railroad freight business, provided that Lessee retain on its railroad tracks no more Cars than are necessary to fulfill its immediate requirements to provide transportation and facilities upon reasonable request therefor to shippers on its railroad tracks. However, Lessee's rights shall be subject and subordinate to the rights of any owner or secured party under any financing agreement entered into by BRAE in connection with the acquisition of some or all of Cars, i.e., upon notice to Lessee from any such secured party or owner that an event of default has occurred and is continuing under such financing agreement, such party may require that all rent shall be made directly to such party and/or that Cars be returned to such party. Lessee agrees that to the extent it has physical possession and can control use of the Cars, the Cars will at all times be used and operated under and in compliance with the laws of the jurisdiction in which the same may be located and in compliance with all lawful acts, rules and regulations, and orders of any governmental bodies or officers having power to regulate or supervise the use of such property, except that either BRAE or Lessee may in good faith and by appropriate proceedings contest the application of any such rule, regulation or order in any reasonable manner at the expense of the contesting party.

B. Lessee will not directly or indirectly create, incur, assume, or suffer to exist (except as provided in Section 7A) any mortgage, pledge, lien, charge, encumbrance, or other security interest

## SCHEDULE C

or claim on or with respect to the Cars or any interest therein or in this Agreement or any Schedule hereto. Lessee will promptly, at its expense, take such action as may be necessary duly to discharge any such mortgage, pledge, lien, charge, encumbrance, security interest, or claim if the same shall arise at any time.

### 8. Default

A. The occurrence of any of the following events shall be an event of default:

(i) The nonpayment by Lessee of any sum required herein to be paid by Lessee within ten (10) days after the date any such payment is due.

(ii) The breach by Lessee of any other term, covenant, or condition of this Agreement, which is not cured within ten (10) days thereafter.

(iii) Any act of insolvency or bankruptcy by Lessee, or the filing by Lessee of any petition or action under any bankruptcy, reorganization, insolvency or moratorium law, or any other law or laws for the relief of, or relating to, debtors.

(iv) The filing of any involuntary petition under any bankruptcy, reorganization, insolvency or moratorium law against Lessee that is not dismissed within sixty (60) days thereafter, or the appointment of any receiver or trustee to take possession of the properties of Lessee, unless such petition or appointment is set aside or withdrawn or ceases to be in effect within sixty (60) days from the date of filing or appointment.

(v) The subjection of any of Lessee's property to any levy, seizure, assignment, application or sale for or by any creditor or governmental agency.

(vi) Any action by Lessee to discontinue rail service on all or a portion of its tracks or abandon any of its rail properties pursuant to applicable provisions of the laws of the United States of America or of any state.

(vii) Lessee shall be merged with or consolidated into another corporation which after such merger or consolidation shall have a net worth less than that of Lessee immediately prior thereto.

B. Upon the occurrence of any event of default, BRAE may, at its option,

(i) Terminate this Agreement, proceed by any lawful means to recover damages for a breach hereof, and terminate Lessee's right of possession and use of the Cars, whereupon all right and interest of Lessee in the Cars shall terminate and thereupon BRAE may enter upon any premises where the Cars may be located and take possession of them and henceforth hold, possess and enjoy the same free from any right of Lessee, provided that BRAE shall nevertheless have the right to recover from Lessee any and all rental amounts which under the terms of this Agreement may then be due or which may have accrued to the date on which BRAE took such possession; or

(ii) Proceed by any lawful means to enforce performance by Lessee of this Agreement. Lessee agrees to bear the costs and expenses, including without limitation reasonable attorneys' fees, incurred by BRAE in connection with the exercise of its remedies pursuant to this Section 8B.

### 9. Termination

At the expiration or termination of this Agreement as to any Car, Lessee will surrender possession of such Car to BRAE by delivering the same to BRAE at such place reasonably convenient to Lessee as BRAE shall designate. A Car shall be no longer subject to this Agreement upon the removal of Lessee's railroad markings from such Car and the placing thereon of such markings as may be designated by BRAE, either, at the option of BRAE, (1) by Lessee upon return of such Car to Lessee's railroad line or (2) by another railroad line which has physical possession of the Car at the time of or subsequent to termination of the lease term as to such

## SCHEDULE C

Car. If such Car is not on the railroad line of Lessee upon termination, any cost of assembling, delivering, storing, and transporting such Car to Lessee's railroad line or the railroad line of a subsequent lessee shall be borne by BRAE. If such Car is on the railroad line of Lessee upon such expiration or termination or is subsequently returned to Lessee's railroad line, Lessee shall at its own expense within five (5) working days remove Lessee's railroad markings from such Car and place thereon such markings as may be designated by BRAE. After the removal and replacement of markings, Lessee shall use its best efforts to load such Car with freight and deliver it to a connecting carrier for shipment. Lessee shall provide up to \_\_\_\_\_ days' free storage on its railroad tracks for BRAE or the subsequent lessee of any terminated Car. If any Car is terminated pursuant to Sections 6C, 6E or 8 hereof prior to the end of its lease term, Lessee shall be liable to BRAE for all costs and expenses incurred by BRAE to repaint such Car and place thereon the markings and name or other insignia of BRAE's subsequent lessee.

### 10. Indemnities

### 11. Representations, Warranties and Covenants

Lessee represents, warrants and covenants that:

(i) Lessee is a corporation duly organized, validly existing and in good standing under the laws of the state where it is incorporated and has all necessary corporate power and authority, permits and licenses to perform its obligations under this Agreement.

(ii) The entering into and performance of this Agreement will not violate any judgment, order, law or regulation applicable to Lessee, or result in any breach of, or constitute a default under, or result in the creation of any lien, charge, security interest or other encumbrance upon any assets of Lessee or on the Cars pursuant to any instrument to which Lessee is a party or by which it or its assets may be bound.

(iii) There is no action or proceeding pending or threatened against Lessee before any court or administrative agency or other governmental body which might result in any material adverse effect on the business, properties and assets, or conditions, financial or otherwise, of Lessee.

(iv) There is no fact which Lessee has not disclosed to BRAE in writing, nor is Lessee a party to any agreement or instrument nor subject to any charter or other corporate restriction which, so far as the Lessee can now reasonably foresee, will individually or in the aggregate materially adversely affect the ability of the Lessee to perform its obligations under this Agreement.

(v) Lessee has during the years 1964-1968 neither built, leased nor purchased any new or rebuilt freight cars.

### 12. Inspection

BRAE shall at any time during normal business hours have the right to enter the premises where the Cars may be located for the purpose of inspecting and examining the Cars to insure Lessee's compliance with its obligations hereunder. Lessee shall immediately notify BRAE of any accident connected with the malfunctioning or operation of the Cars, including in such report the time, place and nature of the accident and the damage caused, the names and addresses of any persons injured and of witnesses, and other information pertinent to Lessee's investigation of the accident. Lessee shall also notify BRAE in writing within five (5) days after any attachment, tax



## SCHEDULE C

lien or other judicial process shall attach to any Car. Lessee shall furnish to BRAE promptly upon its becoming available, a copy of its annual report submitted to the ICC and, when requested, copies of any other income or balance sheet statements submitted to the ICC or its shareholders generally.

### 13. Miscellaneous

A. This Agreement and the Schedules contemplated hereby shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns, except that Lessee may not without the prior written consent of BRAE assign this Agreement or any of its rights hereunder or sublease the Cars to any party, and any purported assignment or sublease in violation hereof shall be void. Lessee agrees to acknowledge, upon receipt, any assignment of this Agreement by BRAE to an owner or secured party under any financing agreement entered into by BRAE in connection with the acquisition of all or part of the Cars leased hereunder. Lessee hereby agrees that any such assignment may be with respect to all or part of the Cars to be leased hereunder and may relate to all or part of the Cars on any Schedule hereto. Any assignment of this Agreement by BRAE to an owner or secured party shall not subject that owner or secured party to any of BRAE's obligations hereunder. Those obligations shall remain enforceable by Lessee solely against BRAE.

B. Both parties agree to execute the documents contemplated by this transaction and such other documents as may be required in furtherance of any financing agreement entered into by BRAE in connection with the acquisition of the Cars in order to confirm the financing party's interest in and to the Cars, this Agreement and Schedules hereto and to confirm the subordination provisions contained in Section 7 hereof and in furtherance of this Agreement.

C. It is expressly understood and agreed by the parties hereto that this Agreement constitutes a lease of the Cars only and no joint venture or partnership is being created. Notwithstanding the calculation of rental payments, nothing herein shall be construed as conveying to Lessee any right, title or interest in the Cars except as a lessee only.

D. No failure or delay by BRAE shall constitute a waiver or otherwise affect or impair any right, power or remedy available to BRAE nor shall any waiver or indulgence by BRAE or any partial or single exercise of any right, power or remedy preclude any other or further exercise thereof or the exercise of any other right, power or remedy.

E. This Agreement shall be governed by and construed according to the laws of the State of California.

F. All notices hereunder shall be in writing and shall be deemed given when delivered personally or three days after deposit in the United States mail, postage prepaid, certified or registered, addressed to the president of the other party at the address set forth in the preamble to this Agreement.

G. No security interest in this Agreement, as chattel paper (as defined in the Uniform Commercial Code), may be created by the transfer of possession except by transfer of an original, duplicate or photocopy of this Agreement and the only original counterpart of the applicable Schedule or Schedules. The original counterpart of each Schedule shall be marked "Original" and delivered to BRAE and all other counterparts thereof shall be duplicates and shall be marked "Duplicate."

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

BRAE CORPORATION

BY: \_\_\_\_\_

TITLE: \_\_\_\_\_

DATE: \_\_\_\_\_

BY: \_\_\_\_\_

TITLE: \_\_\_\_\_

DATE: \_\_\_\_\_

SCHEDULE C

## EQUIPMENT SCHEDULE No.

BRAE CORPORATION hereby leases the following Cars to .....  
 pursuant to that certain Lease Agreement dated as of ....., 19....

[illegible]

RAE CORPORATION

Y: \_\_\_\_\_

TTLE: \_\_\_\_\_

DATE: \_\_\_\_\_

BY: \_\_\_\_\_

TITLE:

DATE: \_\_\_\_\_

SCHEDULE C

STATE OF ..... }  
COUNTY OF .....

On this ..... day of ....., 19....., before me personally appeared ....., to me personally known, who being by me duly sworn says that such person is ..... of ....., and that the foregoing Lease Agreement, Rider(s) No. .... and Equipment Schedule(s) No. .... were signed on behalf of said corporation by authority of its board of directors, and such person acknowledged that the execution of the foregoing instruments were the free acts and deeds of such corporation.

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Notary Public

STATE OF CALIFORNIA }  
CITY AND COUNTY OF SAN FRANCISCO }

On this ..... day of ....., 19....., before me personally appeared ....., to me personally known, who being by me duly sworn says that such person is ..... of BRAE CORPORATION, and that the foregoing Lease Agreement, Rider(s) No. .... and Equipment Schedule(s) No. .... were signed on behalf of said corporation by authority of its board of directors, and such person acknowledged that the execution of the foregoing instruments were the free acts and deeds of such corporation.

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Notary Public

ASSIGNMENT OF LEASE AND AGREEMENT dated as of \_\_\_\_\_, 19 \_\_\_\_ (this "Assignment"), by and between BRAE CORPORATION, a Delaware corporation (together with its successors and assigns, "BRAE"), and MORGAN GUARANTY TRUST COMPANY OF NEW YORK, as Trustee, a corporation organized under the laws of the State of New York (the "Trustee").

WHEREAS BRAE has entered into an Equipment Trust Agreement dated as of June 1, 1979 (such Equipment Trust Agreement, together with any amendments or supplements thereto, hereinafter called the "Agreement");

WHEREAS BRAE and \_\_\_\_\_ (the "Lessee") have entered into a lease of Equipment (as defined in the Agreement) dated as of \_\_\_\_\_, \_\_\_\_\_ (such lease, together with any amendments or supplements thereto, hereinafter called the "Lease"), providing for the leasing by BRAE to the Lessee of units of the Trust Equipment (as defined in the Agreement);

WHEREAS the Lease may also cover the leasing to the Lessee of other equipment not included as part of the Trust Equipment; and

WHEREAS in order to provide security for the obligations of BRAE under the Agreement and as an inducement to the investor for which the Trustee is acting to purchase Trust Certificates (as defined in the Agreement), BRAE agrees to assign for security purposes its right in, to and under the Lease to the Trustee as and only to the extent that the Lease relates to the Trust Equipment;

NOW, THEREFORE, in consideration of the payments to be made and the covenants hereinafter mentioned to be kept and performed, the parties hereto agree as follows:

1. BRAE hereby assigns, transfers and sets over unto the Trustee, as collateral security for the payment and performance of BRAE's obligations under the Agreement, all of BRAE's right, title and interest, powers, privileges and other benefits under the Lease as and only to the extent that the Lease relates to the Trust Equipment set forth in Annex A hereto, including, with-

out limitation, all rights to receive and collect all rentals, profits and other sums payable to or receivable by BRAE from the Lessee under or pursuant to the provisions of the Lease to the extent that the same are payable in respect of such Trust Equipment, whether as rent, casualty payment, indemnity, liquidated damages or otherwise (such moneys hereinafter called the "Payments"); provided, however, that unless an Event of Default under the Agreement, or any event which, with notice or lapse of time or both, would constitute such an Event of Default, shall have occurred and be continuing, it is understood that BRAE shall be entitled to collect and receive all such Payments and to make all waivers and agreements, to give all notices, consents and releases, to take all action upon the happening of an event of default specified in the Lease, and to apply all Payments to which BRAE is entitled to the payment of any and all of BRAE's obligations under the Agreement and to retain the balance, if any. In furtherance of the foregoing assignment, but subject to the foregoing provisions of this paragraph, BRAE hereby irrevocably authorizes and empowers the Trustee in its own name, or in the name of its nominee, or in the name of BRAE or as its attorney, to ask, demand, sue for, collect and receive any and all Payments to which BRAE is or may become entitled under the Lease, and to enforce compliance by the Lessee with all the terms and provisions thereof. Whenever a Lease covers other equipment not included as part of the Trust Equipment and the amount of any payment due to BRAE under such Lease as car hire payments (including both straight and incentive per diem), mileage charges or other rental revenues is calculated on an aggregate basis for all equipment leased thereunder, for the purposes of this Assignment an amount equal to the Assigned Fraction (as hereinafter defined) of each such payment shall be deemed to be payable with respect to such Trust Equipment leased under such Lease. The term "Assigned Fraction" as used herein shall mean a fraction the numerator of which shall be the number of units of equipment comprising such Trust Equipment leased under such Lease and the denominator of which shall be the aggregate number of units of equipment (including such units of Trust Equipment) at the time leased under such Lease.

2. This Assignment is executed only as security

for the obligations of BRAE under the Agreement and, therefore, the execution and delivery of this Assignment shall not subject the Trustee to, or transfer, or pass, or in any way affect or modify, the liability of BRAE under the Lease, it being understood and agreed that notwithstanding this Assignment or any subsequent assignment, all obligations of BRAE to the Lessee shall be and remain enforceable by the Lessee, its successors and assigns, against, and only against BRAE or persons other than the Trustee.

3. To protect the security afforded by this Assignment, BRAE agrees as follows:

(a) BRAE will faithfully abide by, perform and discharge each and every obligation, covenant and agreement which the Lease provides is to be performed by BRAE.

(b) At BRAE's sole cost and expense, BRAE will appear in and defend every action or proceeding arising under, growing out of or in any manner connected with the obligations, duties or liabilities of BRAE under the Lease.

(c) Should BRAE fail to make any payment or to do any act which this Assignment requires BRAE to make or do, then the Trustee, but without obligation so to do, after first making written demand upon BRAE and affording BRAE a reasonable period of time within which to make such payment or do such act, but without releasing BRAE from any obligation hereunder, may make or do the same in such manner and to such extent as the Trustee may deem necessary to protect the security provided hereby, including specifically, without limiting its general powers, the right to appear in and defend any action or proceeding purporting to affect the security hereof and the rights or powers of the Trustee, and also the right to perform and discharge each and every obligation, covenant and agreement of BRAE contained in the Lease; and, in exercising any such powers, the Trustee may pay necessary costs and expenses, employ counsel and incur and pay reasonable attorney's fees, and BRAE will reimburse the Trustee for such costs, expenses and fees.

4. Upon the full discharge and satisfaction of all of BRAE's obligations under the Agreement and this Assignment, all rights herein assigned to the Trustee shall terminate, and all estate, right, title and interest of the Trustee in and to the Lease shall revert to BRAE, and the Trustee shall take such action as BRAE may reasonably request to confirm BRAE's estate, right, title and interest in and to the Lease.

5. BRAE will, from time to time, do and perform any other act and will execute, acknowledge, deliver and file, register, deposit and record (and will refile, reregister, rerecord or redeposit whenever required) any and all further instruments required by law or reasonably requested by the Trustee in order to confirm or further assure the interests of the Trustee hereunder.

6. If an Event of Default shall occur and be continuing under the Agreement, the Trustee may assign all or any of the rights assigned to it hereby or arising under the Lease, including, without limitation, the right to receive any Payments due or to become due. In the event of any such assignment, any such subsequent or successive assignee or assignees shall, to the extent of such assignment, enjoy all the rights and privileges and be subject to all the obligations of the Trustee hereunder. The Trustee will give written notice to BRAE and the Lessee of any such assignment.

7. This Assignment shall be governed by the laws of the State of New York, but the parties shall be entitled to all rights conferred by the laws of the United States of America permitting filing with the Interstate Commerce Commission.

8. This Assignment shall not be deemed delivered by BRAE until accepted by the Trustee in New York, New York.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed in their respective names, by officers thereunto duly authorized, and their respective seals to be affixed and duly attested, all as of the date

first above written.

BRAE CORPORATION,

by

\_\_\_\_\_  
Vice President

[Corporate Seal]

Attest:

\_\_\_\_\_  
Assistant Secretary

MORGAN GUARANTY TRUST COMPANY  
OF NEW YORK, as Trustee,

by

\_\_\_\_\_  
Trust Officer

[Corporate Seal]

Attest:

\_\_\_\_\_  
Assistant Secretary



STATE OF                   , )  
                               ) ss.:  
 COUNTY OF               ,)

On this           day of                   , before me personally appeared                   , to me personally known, who, being by me duly sworn, says that he is                   of BRAE CORPORATION, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation and that said instrument was signed and sealed on behalf of said corporation by authority of its By-laws and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

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Notary Public

[Notarial Seal]

My Commission expires

STATE OF NEW YORK, )  
                               ) ss.:  
 COUNTY OF NEW YORK,)

On this           day of                   , before me personally appeared                   , to me personally known, who, being by me duly sworn, says that he is a Trust Officer of MORGAN GUARANTY TRUST COMPANY OF NEW YORK, a New York corporation, that one of the seals affixed to the foregoing instrument is the seal of said corporation and that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

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Notary Public

[Notarial Seal]

My Commission expires

## ANNEX A

<u>No. of Units</u>	<u>Road Numbers</u>	<u>Description</u>	AAR <u>Mechanical Designation</u>
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